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PO Box 418
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1855 TREATY AUTHORITY

East Lake ♦ Leech Lake ♦ Mille Lacs ♦ Sandy Lake ♦ White Earth

May 26, 2016

Sent via email to
Pipeline.Comments@state.mn.us

Jamie MacAlister, Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul MN 55101

Re: EIS Scoping comments for Sandpiper and Line 3

Dear Ms. MacAlister,

The 1855 Treaty Authority represents approximately 25,000 Chippewa tribal members who are the current beneficiaries of the 1855 Chippewa Treaty with United States, which along with prior treaties reserved a variety of important, off-reservation (ceded territory) treaty protected usufructuary property rights¹ across Minnesota² mostly north of I-94. (See *USACE Issue Paper* attached to 1855 TA - EQB pipeline comments letter dated May 2, 2016, as Exhibit B). Essentially, usufructuary rights to harvest are the same on and off reservation except for customary co-management of off reservation natural resources with states' DNR.

¹ See Exhibit A - EPA Region 5 letter to John Wachtler DOC-EEERA dated Feb. 25, 2016 describing expectations from discussions to ensure that tribal interest including treaty rights in ceded territory are fully considered. The Corps is also coordinating with U.S. Fish and Wildlife Service to assure compliance with the Endangered Species Act.

² Also Wisconsin, North Dakota and Michigan lands included in the 1825 Treaty of Prairie du Chien territory.

TREATY WITH THE CHIPPEWA, 1855.

Feb. 22, 1855. | 10 Stat., 1165. | Ratified March 3, 1855. | Proclaimed Apr. 7, 1855.

Consultation for off reservation treaty rights has not occurred in part, because of ALJ Lipman's jurisdictional analysis and resulting decision. (See Motion for Reconsideration by Honor the Earth dated May 19, 2014). It has been 2 years since the motion was unanswered and tribal consultation about wild rice and other tribal resources is just beginning. However, while the *Draft Scoping Decision Document for Sandpiper Pipeline Project* speaks broadly, it is over vague and void of meaningful concepts environmental justice and protection. It is these exact failures to understand the rights of the Chippewa that are of concern because for us

The US Constitution defines treaties as part of the supreme law of the land, with the same legal force as federal statutes. Treaties are to be interpreted in accordance with the federal Indian canons of construction, a set of long-standing principles developed by courts to guide the interpretation of treaties between the United States government and Indian tribes.

See *EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights* Feb. 2016 (citing Minnesota v. Mille Lacs Band of Chippewa, 526 U.S. 172 (1999)).

More recently, the Eighth Circuit Court of Appeals 2015 decision in U.S. v Brown relied heavily on the Mille Lacs decision and particularly pointing out Chief Flat Mouth's comments during the treaty making with regard to expressly reserving rights in the 1837 treaty saying

My Father. Your children are willing to let you have their lands, but they wish to reserve the privilege of making sugar from the trees, and getting their living from the Lakes and Rivers, as they have done heretofore, and of remaining in this Country. . . . You know we can not live, deprived of our Lakes and Rivers; . . . we wish to remain upon them, to get a living.³

The very same *Chippewas of the Mississippi* are signatories to the treaties of 1837, 1842, 1847, 1854, 1855, 1863, 1864, 1867, and the same Chief Flat Mouth as signatory to the 1837 and 1855 treaties and the U.S. Supreme Court recognized in Mille Lacs there has never been any congressional abrogation of any of the

³ See U.S. v Brown, 2013 WL 6175202; upheld U.S. v. Brown, 777 F.3d 1025 (8th Cir. 2015).

usufructuary property rights of the Chippewa, with a critical focus on the 1855 treaty during the appeals.

As such, our primary concern is protecting the environment for the many generations to come after us who also need to enjoy the same individual usufructuary property rights to a clean healthy environment in which to live, protected by constitutional due process, which can only be abrogated by Congress, not Minnesota PUC or DOC.

Therefore the major focus of combine EIS for Sandpiper and Line 3, must be honest and above board with recognition of pipeline abandonment in the long run, whether 20 years, 50 years, 100 years or longer. Instead, the Draft Scoping Decision Document by Mn DOC-EERA (April 8, 2016) uses the word *decommissioning* twice in the 43 page document. The first mention is for the “Decommissioning of Line 3 Pipeline” under the General Description of the Project, at Item G in the Executive Summary on page 41. The second time “Decommissioning” is a lone mention is under Public Health and Safety (See Appendix B, item 7 (e) on page 42).

While Enbridge plans to decommission it’s old pipelines in northern Minnesota, we Chippewa recognize the permanent abandonment of these pipelines as a perpetual, future of on-going environmental hazardous material generation and toxic transfer conduits or pipelines (after corrosion, corroding and decomposing) through the waterways, water systems and aquifers which we rely on for our existence and economic rights.

As such the real focus of environmental justice must use federal environmental standards now, instead of trying to sneak by with weaker state laws, again, which do not protect our constitutionally protected federal treaty rights. According to the Draft Scoping Document the

Cumulative effects are those that result from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions and are to be addressed pursuant to Minnesota Rule 7852.1900, subpart 3, for pipeline routing. The purpose of the cumulative effects analysis is to identify any proposed project effects that, when combined with other effects to resources in the region, may cumulatively become significant through incremental

impacts. Adverse impacts that cannot be avoided as well as irreversible and irretrievable commitments of resources also will be presented.

(Emphasis added). Presented?

For the Chippewa, the cumulative and incremental impacts from all crude oil pipelines, (including pipelines like MinnCan Line 4 expansion plans and current total flow for cumulative risk analysis) crossing lakes, rivers and aquifers of northern Minnesota must be considered for past, present and certain future environmental damages in the EIS. This includes all 6 pipelines and 2 natural gas pipelines along the US Highway 2 corridor. This includes Clipper border crossing Supplemental EIS. This is important because Enbridge has 2 similar aged pipelines along US Hwy 2, which suggests 2 more Enbridge-type so-called replacement pipeline (and abandonment) projects in the future, to add a second Enbridge planned (future abandonment) toxic corridor.

What is the real value of a pristine, freshwater ecosystem⁴ that is presently able to sustain modern economies as well as the indigenous Chippewa with federally protected usufructuary rights? What about the ethnohistorical and archeological tribal cultural properties⁵ more recently identified with an EPA grant?

Qualitative comparison of route alternatives will be conducted for property values, human populations and income comparisons. This must be the flip side of environmental justice? The state of Minnesota has recognized the value of (limiting by) leasing Chippewa usufructuary harvest rights in the 1854 Treaty

⁴ See *The Value of Nature's Benefits in the St. Louis River Watershed*, June 2015, Fletcher, A., Christin, Z. 2015. *The Value of Nature's Benefits in the St. Louis River Watershed*. Earth Economics, Tacoma, WA. (This study was commissioned by the Fond du Lac Band of Lake Superior Chippewa. This project was funded in part by the United States Environmental Protection Agency and the Fond du Lac Band of Lake Superior Chippewa.)

⁵ See *Geographic Information System (GIS) Mapping Analysis of Potential Community Vulnerabilities: The Proposed Sandpiper Pipeline in Northern Minnesota, Prepared for Honor the Earth Technical Assistance Services for Communities, February 2016*. (This Geographic Information System (GIS) analysis of potential community vulnerabilities from the proposed Sandpiper Pipeline was developed by Skeo Solutions, an independent consulting firm, for the *Honor the Earth* organization and their partners in northern Minnesota. Skeo was funded through the U.S. Environmental Protection Agency's (EPA's) Technical Assistance Services for Communities (TASC) program).

Territory since the Minnesota Legislature enacted Minn. Stat. 97A.157 in 1988, which payments are millions annually to the Lake Superior Chippewa bands in the arrowhead, to maintain sustainable harvests. Climate change is the number one contributor to declining walleye in (lake) Mille Lacs. If extreme extraction methods of tar sands oil in Canada is greatest single contributor to climate change, does Enbridge's need for a new pipeline (and pipeline abandonment in Minnesota) benefit Minnesota? Or would denying an Enbridge a Certificate of Need allowing continued, reduced, half pressure flow of Line 3 better match global market demand and reduce tar sands climate change impacts for us in Minnesota?

We have included the exhibits previously included as attachments to the EQB to help DOC see how its acts, actions and omissions speak louder than words. If Enbridge says it *cannot or will not* clean up or remove 300 miles of pipeline pollution, then the Chippewa *cannot and will not* consent to the certain and foreseeable environmental damages being left to our aquatic ecosystem world.

If you have any questions please call on me at frankbibeau@gmail.com or 218-760-1258. Good luck with congressional due process!

Sincerely,

/s/ Frank Bibeau

Frank Bibeau
Executive Director

Attachments: 1855 Treaty Authority letter to EQB to Relieve DOC as RGU
 TASC Report for Honor the Earth
 Honor the Earth's Motion to Reconsideration May 14, 2014

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1855 TREATY AUTHORITY

East Lake ♦ Leech Lake ♦ Mille Lacs ♦ Sandy Lake ♦ White Earth

May 2, 2016

Mr. David Fredrickson, Chairman
Minnesota Environmental Quality Board
520 Lafayette Rd
St. Paul, Minnesota 55155

Re: Comments in response for EQB *to Relieve*
PUC/DOC as RGU in favor of PCA and/or DNR
For Sandpiper and Line 3 Replacement pipeline projects

Dear Chairman Fredrickson,

I am writing on behalf of more than 25,000 Chippewa of the Mississippi who enjoy a variety of treaty rights throughout Minnesota, roughly north of I-94, where both proposed pipeline projects are planned to be constructed and Line 3 abandoned, to provide comments *for the EQB to relieve the Minnesota Public Utilities Commission ("Commission") of its current RGU status for the above-entitled projects* and replace it with a joint RGU consisting of the Minnesota Pollution Control Agency ("PCA") and the Minnesota Department of Natural Resources ("DNR"). We understand that Minnesota Rules 4410.0500, Subp. 6 also provides for selection of the RGU for environmental reviews and that *the EQB may designate . . . a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.*

MDOC Failure to cooperate and coordinate

For the past 2 years, the Department of Commerce has ignored repeated important and significant environmental warnings and concerns from various reservation governments and tribal groups, based on our treaty protected rights. I know this

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because I have been working with Chippewa band members and reservation governments and representing *Honor the Earth* at the Public Utilities Commission (PUC) for more than 2 years on the Enbridge Sandpiper pipeline project 13-473 and 14-474. Both Sandpiper and Line 3 Replacement project threaten tribal resources and would increase the risk and potential impact of oil spills in the state, presenting serious risks of degradation of water, land, and air-quality. The project applicant's current preferred route would place these risks directly through Minnesota's highest quality water resources, putting our pristine waters, wild rice and the welfare of our wildlife in danger.

The most apparent, negative and public example of DOC disrespect, if not intentional disregard of Tribal rights, environmental justice and concerns was accomplished by the DOC's delayed posting of the EPA Region 5 letter dated February 25, which arrived in the DOC mail room on March 1, 2016. (See Exhibit A), The DOC prevented its publication to the tribal and environmental parties on the edockets for both pipeline projects (Sandpiper and Line 3R), for which the PUC had hearings scheduled on March 24, 2016, (the DOC waited until March 28 to post the EPA letter publicly).

The DOC, Asst. Commissioner Bill Grant and John Wachtler (DOC-EERA) were/are very well aware that White Earth reservation had filed a motion with the PUC to be a *Cooperating Agency* on the EIS in December 2015. Without public knowledge of the EPA letter, the first order of business for the PUC on March 24 was to deny the motion by White Earth reservation, because the PUC had no idea about the EPA Region 5 letter had arrived at DOC nearly a month before.

It is clear that the EPA's understanding from discussions with the MDOC, prior to the Feb. 25, 2016 letter was that

We expect these state EISs and the Corps EA will consider impacts to resources of interest to tribes and that affected tribes will continue to be consulted as these documents are prepared. We also expect that the Corps EA will evaluate and address environmental justice consistent with Executive Order 12,898; we encourage state consideration of environmental justice in their reviews.

The real model for environmental protection of Chippewa usufructuary property has already been developed by the Corps of Engineers with their 1997 *Issue Paper* with regard to Crandon mine and Mole Lake. (See Exhibit B previously filed on Sandpiper edockets). As the *Issue Paper* is now 20

years old and preceded the 1999 Minnesota v Mille Lacs Supreme Court decision, it is essential to update and upgrade the *Issue Paper* with regard to the present, proposed pipelines crossing the headwaters of 3 of 4 of the major watersheds of North America.

It is also essential that the Chippewa bands participate in the development of the 2016 revisions to the *Issue Paper* on trust responsibility and protection of natural resources. *Honor the Earth* has previously argued for inclusion of the *Issue Paper* in the DOC environmental analysis, which to date, has been rejected by the DOC and ALJ and ultimately by the PUC in granting the certificate of need for the sandpiper pipeline.

We know that the U.S. State Department is doing a Supplemental EIS (SEIS) with regard to the Clipper pipeline border crossing (See Exhibit C), which should be combined as a part of this Sandpiper and Line 3R EIS as the Clipper pipeline will continue the transport of Canadian tar sands, which the US Department of Defense has already identified as one of the major contributors to climate change, which climate change is a number one priority concern for DOD and national security. Tar sands extreme extraction and fracking practices are at the top of contributing environmental impacts for North America and the United States.

For more information on the EPA website see: <http://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes-guidance-discussing-tribal-treaty> and on: <http://www.epa.gov/tribal/forms/consultation-and-coordination-tribes> .

Greater expertise in analyzing the potential impacts of the project

The DNR and PCA have much *greater expertise in analyzing the potential impacts of the project* in terms of depth and breadth across Minnesota. The DOC does not have the intimate knowledge base of all of the disciplines along the entire corridor like DNR and PCA. DNR and MPCA have relationships and field offices throughout MN and with reservations. DOC is a metro agency focused on accomplishing Enbridge's pipeline goals under MN law.

DOC is just now at the beginning of trying to establish relationships with reservations and tribal members, with only a handful of meetings, after the Appeal of the PUC's grant of Certificate of Need based on DOC's substandard environmental review. DNR and PCA demonstrated their concerns about the

proposed pipeline projects, oil spill history, concerns about water crossings and the overall preferred Enbridge routes in the 384 page EQB exhibit for the April 20 EQB Public Meeting. The PUC and DOC dismissed and undercut repeated warnings by tribal governments, environmental organizations the DNR and PCA. Even after the Minnesota Center for Environmental Advocacy won the Appeal for a full EIS, MCEA was compelled and filed a *Motion to Order the Department of Commerce to Renegotiate the Memorandum of Understanding, and to Establish an Expert Advisory Council under Minn. Stat. § 116D.03*.

In the MCEA Motion's Conclusion, MCEA argues "To [Friends of the Headwater's]'s knowledge, this is the first instance in which a Minnesota agency has conducted an EIS on a pipeline without federal support. It is a difficult task even for an experienced agency, but for an inexperienced agency like the Department [of Commerce], assistance and oversight are critical, especially where it may be relying on the project proposer to the detriment of the EIS. FOH therefore urges the Commission to utilize all resources available to it and the Department, including a revised MOU providing for non-discretionary assistance from DNR and PCA, and the advisory councils of § 116D.03."

Early on DOC ignored important information about the groundwater and groundwater-surface water interactions have been totally ignored, although submitted to DOC and edocket from USGS about the Hydrological and Biogeochemical Research in the Shingobee River Headwaters area, North-Central, Minnesota. (See Exhibit D). The DNR has field hydrologists, hydrogeologists (yes there is a difference in expertise) biologists, fisheries and wildlife managers, and ecologist who know the resource because they live, play and work within their areas; they live in the locale and know the issues intimately.

Groundwater and surface water interchange constantly. A lake or stream can receive groundwater in one location while feeding (recharging) the groundwater in another location of the same source. The ground is where the pipes are to be placed; out of sight, out, of mind. But even a 1% leak can cause a major catastrophe, particularly in glacial outwash plains that dot the proposed alignment.

The Straight River area is particularly susceptible because of the major irrigation wells that pump from 50 to 100 million gallons per day. The attenuation model Enbridge and DOC espouse is not relevant in this type of situation. There are at least 31 high capacity irrigation wells in 1/2 mile of the pipeline alignment in the Straight River basin (we usually consider 1 mile radius) that will completely alter a small leak, mixing it within the water column and distributing the product on the

aquifer materials. Line 3 will contain significant heavy metals such as arsenic, bromide, cadmium, cyanide, lead, mercury, nickel and radium. These toxic chemicals are concentrated under the attenuation model and cannot be treated. They remain in the ground water and surface water environments. Once pipelines are permitted, DOC is no longer concerned with impacts or clean-up.

In terms of actual experience, two (2) recent, major EIS studies that DNR and PCA completed in cooperation with federal agencies are the Red River Storage EIS and the recently completed Copper Nickle EIS in NE MN near the BWCA. To my knowledge, DOC has never done an EIS per the MN Environmental Policy Act let alone an EIS of these magnitudes. There are over 300 miles of varying environment through Minnesota alone, with most of the project risk and impacts are routed where wild rice grows.

Important to note for Minnesota and this request to relieve the MDOC as RGU is that the DNR and PCA are generally involved and given notice of every environmental permit application and proposed environmental actions. The DOC is not on that same list of agency notification or involvement because they have limited resources and expertise, much less for pipelines. The DOC does not regulate pipelines or oil, and neither does DNR or PCA. But in the event of an oil spill . . . again . . . DOC will not be called for assessment or clean-up. Only the next pipeline permit application.

The DOC lacks the requisite skills, knowledge and abilities compared to the DNR and PCA, and more important tribal relationships. We have been offended many times by the ignorant approach by DOC and Enbridge regarding public input for the EISs for the proposed pipelines. After 2 years of fighting for an EIS and meaningful public hearings at times convenient for all of Minnesota's affected citizens and property owners, the DOC once again rushes a hearing schedule, which includes some communities across northern Minnesota, to avoid (precede) Fishing Opener the customary start of people returning to affected lakes region. (See Exhibit E).

The DOC *Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings* issued April 11, 2016, has 13 meetings, some scheduled along the Enbridge preferred, new construction corridor from Clearbrook to Park Rapids to Superior, Wisconsin, without public meetings about rebuilding Line 3 pipeline in place or abandonment along the US Highway 2 corridor from Bemidji Minnesota to Superior Wisconsin (approximately 150 miles). (See Exhibit E).

In fact, the word abandonment does not appear in the DOC Notice. Enbridge wants to make more, new, future, inevitable environmental pipeline problems in Minnesota without cleaning up the old one (rebuild Line 3 in place or remove) first, and DOC is helping them with Minnesota law and avoiding replacement or abandonment environmental impacts and issues for the EIS. Both the PCA and DNR have common environmental protection obligations and spill response and clean-up responsibilities, DOC does not.

It is also doubtful that if DNR and PCA were the RGU for the EIS they would actually try to seek the most public comment, from impacted peoples. DOC's prior February public hearings were also well timed for the applicant, just like now. Kids are still in school, or evening babysitters, summer lake people have not returned, Chippewa tribal elections are being held, the Legislature is in Session, resort owners are cleaning up in preparation for summer tourism. On top of that, there has been a lot of public participation, mostly dismissed by the DOC and PUC in edocket proceedings. This feel free to comment and DOC/PUC might hear or listen attitude, makes second a round of supposed public meetings by DOC like the definition of insanity "trying the same thing again, and expecting a different result" or "fool me once shame on you, fool me twice shame on me."

No Build Alternative

The DOC and its Comparative Environmental Assessment, which the PUC relied upon in granting the Certificate of Need was argued as equal to an EIS. Only DOC/PUC and Enbridge championed those incorrect notions and resisted via appeal to the Minnesota Supreme Court. Minnesota's People's deserve a fresh, credible EIS from more experienced agencies to restore lost confidence and trust in the big oil pipeline process. DNR and PCA understand better how to properly evaluate and value our present natural resources in the weighing of social, economic and environmental factors for the benefit/cost/risk analysis.

We need to be ahead of the curve, not behind the curve. We need to recognize that *There Will Be More New Jobs in Solar Than Oil by the End of the Year* according to Forbes¹. (See Exhibit F). This is the new Social, Economic and Environmental lay of the land and waters in Minnesota.

¹ There Will Be More New Jobs in Solar Than Oil by the End of the Year by Jonathan Chew @sochews, April 20, 2016, 10:00 AM EDT, <http://fortune.com/2016/04/20/solar-oil-jobs-indeed/>

In conclusion, DOC has failed and is trying to ride the dead horse.

The tribal wisdom of the Dakota Indians, passed on from generation to generation, says that when you discover that you are riding a dead horse, the best strategy is to dismount.

In modern education and government, however, a whole range of far more advanced strategies are often employed, such as:

1. Buying a stronger whip.
2. Changing riders.
3. Threatening the horse with termination.
4. Appointing a committee to study the horse.
5. Visiting other sites to see how others ride dead horses.
6. Lowering the standards so that dead horses can be included.
7. Re-classifying the dead horse as “living, impaired”.
8. Hiring outside contractors to ride the dead horse.
9. Harnessing several dead horses together to increase the speed.
10. Attempting to mount multiple dead horses in hopes that one of them will spring to life.
11. Providing additional funding and/or training to increase the dead horse’s performance.
12. Doing a productivity study to see if lighter riders would improve the dead horse’s performance.
13. Declaring that as the dead horse does not have to be fed, it is less costly, carries lower overhead, and therefore contributes substantially more to the bottom line of the economy than do some other horses.

14. Re-writing the expected performance requirements for all horses.

15. Promoting the dead horse to a supervisory position.

Respectfully, we ask that the Environmental Quality Board dismount from the DOC horse. DOC's learning curve is very expensive for the rest of us who are not accustomed to defending against big oil revenues with the ability to out wait and outspend small, community and environmentally based organizations, who all already relying on our environment for a more harmonious way of life. For all of the reasons and comments shared, the EQB must change the RGU to the DNR and/or PCA because they *have greater expertise in analyzing the potential impacts of the project*.

Mii gwitch,

/s/ Frank Bibeau

Frank Bibeau
Executive Director

Attachments

Email cc: Ken Westlake, EPA Region 5
Danny Gogal, EPA Environmental Justice
Stacy Jensen, Acting Chief, Regulatory Branch USACE St. Paul
Tracy Toulou, Office of Tribal Justice, DOJ
Monica Hedstrom, Director Resource Mgmt, White Earth Reservation
Levi Brown, Environmental Services, Leech Lake Reservation
Susan Klapel, Director, Natural Resources, Mille Lacs Reservation
Walt Ford, USFWS Midwest Tribal Liaison, Rice Lake Refuge
William Baer, USACE, Bemidji
Winona LaDuke, Executive Director, Honor the Earth

EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights

Introduction

EPA recognizes the importance of respecting tribal treaty rights and its obligation to do so. The purpose of this Guidance is to enhance EPA's consultations under the *EPA Policy on Consultation and Coordination with Indian Tribes* in situations where tribal treaty rights may be affected by a proposed EPA action. Specifically, this Guidance provides assistance on consultation with respect to EPA decisions focused on specific geographic areas when tribal treaty rights relating to natural resources may exist in, or treaty-protected resources may rely upon, those areas.¹ In these instances, during consultation with federally recognized tribes (tribes), EPA will seek information and recommendations on tribal treaty rights in accordance with this Guidance. EPA will subsequently consider all relevant information obtained to help ensure that EPA's actions do not conflict with treaty rights, and to help ensure that EPA is fully informed when it seeks to implement its programs and to further protect treaty rights and resources when it has discretion to do so.²

The U.S. Constitution defines treaties as part of the supreme law of the land, with the same legal force as federal statutes. Treaties are to be interpreted in accordance with the federal Indian canons of construction, a set of long-standing principles developed by courts to guide the interpretation of treaties between the U.S. government and Indian tribes.³ As the Supreme Court has explained, treaties should be construed liberally in favor of tribes, giving effect to the treaty terms as tribes would have understood them, with ambiguous provisions interpreted for their benefit. Only Congress may abrogate Indian treaty rights, and courts will not find that abrogation has occurred absent clear evidence of congressional intent. We note that this Guidance does not create any new legal obligations for EPA or expand the authorities granted by EPA's underlying statutes, nor does it alter or diminish any existing EPA treaty responsibilities.

Determining When to Ask About Treaty Rights During Tribal Consultation

EPA consultation with tribes provides the opportunity to ask whether a proposed EPA action that is focused on a specific geographic location may affect treaty-protected rights. Because treaty rights analyses are complex, staff are expected to inquire early about treaty rights.

Certain types of EPA actions, namely those that are focused on a specific geographic area, are more likely than others to have potential implications for treaty-protected natural resources. For example, EPA review of tribal or state water quality standards as a basis for National Pollutant Discharge Elimination System permits typically focuses on a specific water body. If a treaty

¹ This Guidance focuses on consultation in the context of treaties. EPA recognizes, however, that there are similar tribal rights in other sources of law such as federal statutes (e.g., congressionally enacted Indian land claim settlements).

² EPA Administrator, December 1, 2014 Memorandum, Commemorating the 30th Anniversary of the EPA Indian Policy.

³ *Minnesota v. Mille Lacs Band of Chippewa*, 526 U.S. 172 (1999).

reserves to tribes a right to fish in the water body, then EPA should consult with tribes on treaty rights, since protecting fish may involve protection of water quality in the watershed.

Another example of an action in a specific geographic area is a site-specific decision made under the Comprehensive Environmental Response, Compensation, and Liability Act, such as a Record of Decision for a site, or the potential use of Applicable or Relevant and Appropriate Requirements for a cleanup. Other examples include a site-specific landfill exemption determination under the Resource Conservation and Recovery Act or other similar types of regulatory exemptions for specific geographic areas. In each case, employing the following questions in this Guidance during consultation may inform EPA of when treaty rights are present in the defined area and may be affected by the proposed decision.

For purposes of this Guidance, the treaty rights most likely to be relevant to an EPA action are rights related to the protection or use of natural resources, or related to an environmental condition necessary to support the natural resource, that are found in treaties that are in effect. Other treaty provisions, for example those concerning tribal jurisdiction or reservation boundaries, are outside the scope of this Guidance.

EPA actions that are national in scope, and thus not within a focused geographic area, fall outside the scope of this Guidance, because EPA actions focused on specific geographic areas are the ones we believe are most likely to potentially affect specific treaty rights. Examples of such activities outside the scope of this Guidance include the development of National Ambient Air Quality Standards under the Clean Air Act or the national registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act.

Where tribes raise treaty rights as a basis for consultation on issues that are national in scope, or treaty rights otherwise are raised during consultation on national actions, this Guidance can assist in the treaty rights consultation discussion.

In addition, EPA staff should be aware that treaty rights issues in the context of compliance monitoring and enforcement actions should be considered when consulting with tribes pursuant to the *Guidance on the Enforcement Principles of the 1984 Indian Policy* and the *Restrictions on Communications with Outside Parties Regarding Enforcement Actions*. EPA should also act consistent with the *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*.

Questions to Raise During Consultation

EPA should employ the following three questions during consultations when proposing an action that may affect tribal treaty rights within a specific geographic area. These questions may also be employed when treaty rights arise in other contexts. Collaboration between program and legal staff before and during consultation is an important aspect of ensuring both that these questions are

asked and the answers are understood. For any treaty rights discussion raised during consultation, the tribe may identify particular tribal officials to consult with EPA about treaty rights. It is important that EPA work to ensure that consultation occurs with the appropriate tribally identified officials.

(1) Do treaties exist within a specific geographic area?

This question is designed to help EPA determine when a treaty and its related resources exist within the specific geographic area of the proposed action. This question is important because tribes may possess treaty rights both inside and outside the boundaries of reservations. In some cases, EPA may already be aware of existing, relevant resource-based treaty rights in a specific geographic area; for example, when a tribe has treaty rights within the boundaries of its reservation or near its reservation. In other cases, EPA may not be aware of the full effects of the treaty rights, or EPA may find it difficult to determine when a specific geographic area has an associated treaty right. For example, some tribes in the Great Lakes area retain hunting, fishing, and gathering rights both in areas within their reservations and in areas outside their reservation boundaries, commonly referred to as ceded territories. Similarly, some tribes in the Pacific Northwest retain the right to fish in their “usual and accustomed” fishing grounds and stations both within and outside their reservation boundaries, and retained the right to hunt and gather throughout their traditional territories.

(2) What treaty rights exist in, or what treaty-protected resources rely upon, the specific geographic area?

This question is designed to help EPA understand the type of treaty rights that a tribe may retain. By asking this question, EPA can better understand the complexities that are often involved in treaty rights and better understand whether the proposed EPA action could affect those rights. Some treaties explicitly state the protected rights and resources. For example, a treaty may reserve or protect the right to “hunt,” “fish,” or “gather” a particular animal or plant in specific areas. Treaties also may contain necessarily implied rights. For example, an explicit treaty right to fish in a specific area may include an implied right to sufficient water quantity or water quality to ensure that fishing is possible. Similarly, an explicit treaty right to hunt, fish, or gather may include an implied right to a certain level of environmental quality to maintain the activity or a guarantee of access to the activity site.

(3) How are treaty rights potentially affected by the proposed action?

This question is designed to help EPA understand how a treaty right may be affected by the proposed action. EPA should explain the proposed action, provide any appropriate technical information that is available, and solicit input about any resource-based treaty rights. It is also appropriate to ask the tribe for any recommendations for EPA to consider to ensure a treaty right is protected.

EPA Actions That May Affect Treaty Rights

EPA's next steps typically will involve conducting legal and policy analyses in order to determine how to protect the rights. These analyses are often complex and depend upon the context and circumstances of the particular situation. Issues that may arise often involve precedent-setting questions or warrant coordination with other federal agencies. It is expected that the EPA lead office or region that engaged in the tribal consultation about the potentially affected treaty rights will coordinate with the Office of International and Tribal Affairs, the Office of General Counsel, and appropriate Offices of Regional Counsel to conduct these analyses. Although the details of how to conduct such legal and policy analyses are not addressed by this Guidance, the EPA process may warrant continued or additional consultation with tribes.

Conclusion

EPA is committed to both protecting treaty rights and improving our consultations with tribes on treaty rights. As part of its commitment, EPA will emphasize staff training and knowledge-sharing on the importance of respecting tribal treaty rights in order to better implement this Guidance. As EPA gains experience on tribal treaty rights and builds upon its prior knowledge, the Agency may modify this Guidance to meet this commitment.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

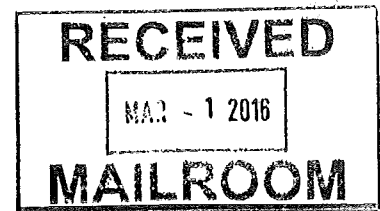
FEB 25 2016

REPLY TO THE ATTENTION OF:

Stacey Jensen
Acting Chief, Regulatory Branch
St. Paul District
U.S. Army Corps of Engineers
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101

John Wachtler
Energy Environmental Review and Analysis Unit
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, Minnesota 55101

Jim Pardee
Wisconsin Environmental Policy Act Coordinator
Bureau of Environmental Analysis and Sustainability
Wisconsin Department of Natural Resources
101 South Webster Street
P.O. Box 7921
Madison, Wisconsin 53707



RE: Environmental impact reviews of proposed Enbridge Line 3 Replacement Pipeline and proposed Sandpiper Pipeline

Dear Ms. Jensen, Mr. Wachtler, and Mr. Pardee:

As you know, the Enbridge Company has proposed installing a new crude oil pipeline to replace its existing Line 3 Pipeline, following the existing Line 3 route from Hardisty Alberta, Canada to Clearbrook, Minnesota and co-located with a portion of the proposed Sandpiper Pipeline from Clearbrook to Superior. The proposed Sandpiper Pipeline would carry Williston Basin crude oil from Tioga, North Dakota, to the Enbridge Terminal in Superior via Clearbrook. Routing for the Sandpiper Pipeline in North Dakota has already been approved by the North Dakota Public Service Commission.

Several tribal governments and environmental organizations have called on the U.S. Army Corps of Engineers (Corps) and the affected states to undertake a joint Federal-State Environmental

Impact Statement (EIS) on the Sandpiper project. EPA has discussed the review process with your agencies in light of these requests, and the purpose of this letter is to state our understanding and expectations based on these discussions.

We understand that decisions on certificate of need and routing in Minnesota rest with the Minnesota Public Utility Commission, to be informed by a State EIS being undertaken by Minnesota Department of Commerce (MDOC). The Minnesota State EIS will consider: 1) multiple route alternatives; 2) impacts to a wide range of resources in the natural and human environment, including resources of interest to tribes; and 3) spill modeling at multiple proposed stream crossing locations. We understand that MDOC will consult with affected tribes during the development of the State EIS.

The Wisconsin Department of Natural Resources (WDNR) is preparing a State EIS to inform permit decisions that will determine the route. We understand that this EIS will also cover a broad range of potential impacts to resources in the natural and human environment, and that WDNR will engage with affected tribes in Wisconsin.

We also understand that the Corps intends to prepare an environmental assessment (EA) that will focus on impacts to jurisdictional Waters of the United States (WOUS) and will inform its permit decision under Section 404 of the Clean Water Act. The Corps will prepare this EA once Minnesota and Wisconsin have made routing decisions; will consider the analyses from the State EISs as part of its review; and is already coordinating with MDOC and WDNR. We understand that the Corps has initiated contact with several Chippewa bands near the Sandpiper project, and is also reaching out to additional tribes with historic ties to the area in compliance with the National Historic Preservation Act. We expect that the Corps will continue to engage with tribes on a government-to-government basis, consulting with them as the NEPA process moves forward, to ensure that tribal interests including treaty rights in ceded territory are fully considered. The Corps is also coordinating with the U.S. Fish and Wildlife Service to assure compliance with the Endangered Species Act. The Corps has indicated that, if the information and analysis in its EA leads to a determination that Enbridge's proposed activities in WOUS warrant preparation of a Federal EIS, it will prepare an EIS before its permit decision.

EPA has reviewed the scopes of the state EISs under development respectively by MDOC and WDNR and believes they will address the relevant issues. We expect these state EISs and the Corps EA will consider impacts to resources of interest to tribes and that the affected tribes will continue to be consulted as these documents are prepared. We also expect that the Corps EA will evaluate and address environmental justice consistent with Executive Order 12,898; we encourage state consideration of environmental justice in their reviews.

EPA will review and comment on the MDOC and WDNR state EISs when they are issued for public comment. We will also review and comment on the Corps EA. Please provide these documents to Ken Westlake of my staff when they are available. At this time we are not advising the Corps, MDOC, and WDNR to prepare a joint Federal/state EIS. We will continue to monitor the situation and coordinate, as appropriate, with the Corps, the states, and tribes on permits related to this project within EPA's legal responsibilities.

If you have questions or comments, please contact me or Ken Westlake of my staff at 312-886-2910 and westlake.kenneth@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan Walts', written in a cursive style.

Alan Walts, Director
Office of Enforcement and Compliance Assurance

Cc:

Melanie Benjamin, Chief Executive Officer
Mille Lacs Band of Minnesota Chippewa
Mille Lacs Government Center
43408 Oodena Drive
Onamia, Minnesota 56359

Erma Vizenor, Chairwoman
White Earth Band of Minnesota Chippewa
24246 Crane Road
White Earth, Minnesota 56591

Carri Jones, Chairwoman
Leech Lake Band of Minnesota Chippewa
190 Salistar Drive, NW
Cass Lake, Minnesota 56633

Wally Dupuis, Chairman
Fond du Lac Band of Minnesota Chippewa
1720 Big Lake Road
Cloquet, Minnesota 55720

SEP 29 1997

Construction-Operations
Regulatory (94-01298-IP-DLB)

Mr. James Schlender
Executive Administrator
Great Lakes Indian Fish & Wildlife Commission
P.O. Box 9
Odanah, Wisconsin 54861

Dear Mr. Schlender:

As a result of issues that have arisen during our evaluation of a permit application by Crandon Mining Company to establish a mining operation near Crandon, Wisconsin, the St. Paul District has been asked by several Native American tribes to address the nature and extent of the Corps trust responsibilities toward Indian tribes in the Corps regulatory permitting process. I have indicated at past consultation meetings that I had requested guidance from Corps Headquarters to address this question.

Enclosed is an issue paper that provides the guidelines that the District will follow to insure that it fulfills its trust obligations. This paper, while very useful for illustrative purposes, may not resolve issues that are specific to any individual treaty or pending permit action.

I propose that we hold a consultation meeting in approximately 60 days. This will provide you time to review the paper and to develop any questions or concerns that you may have regarding these guidelines, as well as to how they will be applied in our review of the Crandon Mining Company permit application. I suggest that the consultation meeting be held in early December in Eau Claire, Wisconsin. Mr. Dave Ballman, of my staff, will coordinate with your staff in scheduling the meeting.

Please contact me at (612) 290-5300 if you have any questions.

Sincerely,

15
J. M. Wonsik
Colonel, Corps of Engineers
District Engineer

SCANNED

Identical Letters:

Arlyn Ackley, Sokaogon Chippewa Community
Philip Shopodock, Forest County Potawatomi Community
Apesanahkwat, Menominee Indian Tribe of Wisconsin
James Schlender, Great Lakes Indian Fish & Wildlife Commission

Ballman	CO-R	DB 9/17
Ahlness	CO-R	h 9/18/97
Hauger	CO-R	th
Wopat	CO-R	BW 24 Sep 97
Haumersen	CO	H
Adamski	OC	SPS
Crump	PP-PM	hc
Breyfogle	DDE	69/28

**ISSUE PAPER
AND
DISTRICT RECOMMENDATION**

**THE AGENCY'S TRUST RESPONSIBILITIES TOWARD
INDIAN TRIBES IN THE REGULATORY PERMITTING PROCESS**

1. **ISSUE.** Work activities performed pursuant to permits issued under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act have the potential to impact Indian treaty rights¹ and to impact resources owned or used by Indian Tribes. Because of this, questions have arisen about the Corps' trust obligations to Indian tribes with respect to the Corps' permitting processes. This paper shall attempt to delineate trust issues related to the permitting process and will attempt to set forth guidelines with respect to those issues². A question and answer format will be used to accomplish this purpose.

2. **May the Corps issue a permit that will impinge on or abrogate treaty rights?**

No, treaty rights³, absent consent of Congress, may not be impinged or abrogated⁴. As the

¹The term "treaty rights", as used in this paper, includes not only rights derived from treaties, per se, but also rights derived from federal statutes, agreements executive orders and the like. The terms "Tribal resources" or "Treaty resources", as used in this paper, refers to resources that the Tribe, pursuant to a treaty, has a right to exploit and includes resources that they own and resources that they have a right to gather. The term "trust resources" refers to resources held in trust by the United States (the title is held by the United States) for the benefit of the Tribe.

²The paper, other than as may be useful for illustrative purposes, will not attempt to resolve issues that are specific to any individual treaty or pending permit action, but will attempt to formulate guidelines which will insure that the agency fulfils all of its trust obligations.

³It should be noted that the terms "treaty rights" and "treaty resources" are not synonymous. For example, a treaty that guarantees a tribe the right to hunt and fish on its reservation, the "treaty right" is the right to take the resource (game or fish), the "treaty resource"

Court held in Northwest Sea Farms, Inc., v. U.S. Army Corps of Engineers, 931 F. Supp. 1555 (W.D. Wash. 1996) 1519-1520:

The Supreme Court has recognized "the undisputed existence of a general trust relationship between the United States and the Indian people." United States v. Mitchell, 463 U.S. 206, 225, 103 S.Ct. 2961, 2972, 77 L.Ed.2d 580 (1983). This obligation has been interpreted to impose a fiduciary duty owed in conducting "any Federal Government action"³ which relates to Indian Tribes. Nance v. Environmental Protection Agency, 645 F.2d 701, 711 (9th Cir.), *cert. Denied*, 454 U.S. 1081, 102 S.Ct. 635, 70 L.Ed.2d 615 (1981), ... In previous cases, this Court has tacitly recognized that the duty extends to the Corps in the exercise of its permit decisions. *See e.g. Muckleshoot Indian Tribe v. Hall*, 698 F. Supp. 1504, 1523 (W.D.Wash.1988) (granting an injunction against the construction of a marina in consideration of the effect upon Indian treaty rights).

In carrying out its fiduciary duty, it is the government's and subsequently the Corps', responsibility to ensure that Indian treaty rights are given full effect. *See e.g. Seminole Nation v. United States*, 316 U.S. 286, 296-297, 62 S. Ct. 1049, 1054-55, 86 L.Ed. 1480, 86 L.Ed.1777 (1942) (finding that the United States owes the highest fiduciary duty to protect Indian contract rights as embodied by treaties). Indeed, it is well established that only Congress has the authority to modify or abrogate the terms of Indian treaties. United States v. Eberhardt, 789 F.2d 1354, 1361 (9th Cir.1986). As such, the Court concludes that the Corps owes a fiduciary duty to ensure that the Lummi Nation's treaty rights are not abrogated or impinged upon absent an act of Congress.

3. How are treaty rights determined?

Treaty rights are determined on a case by case (treaty by treaty) basis. Each individual treaty or series of treaties must be examined to determine the specific rights provided by those treaties.

is the game or fish. Although courts have, almost universally held that treaty rights may not be impinged, they have not held that the resource may not be negatively impacted. See also question 6.

³Note, however, that the same Court that decided Northwest Sea Farms, Inc. issued an order in Lummi Indian Nation v. Cunningham, case No. C92-1023C on September 1, 1992, to the effect that before a claim that treaty rights have been impinged or abrogated is cognizable "the interference with the treaty right must reach a level of legal significance".

³A permit is a Federal Government action"

4. How are Indian treaties to be interpreted?

There are three basic rules of treaty construction. They are: (1) Ambiguities in treaties must be resolved in favor of the Indians, (2) Indian treaties must be interpreted as the Indians would have understood them at the time they consented to the treaty, and (3) Indian treaties must be construed liberally in favor of the Indians. This does not mean, however, that the treaties are to be construed in any manner that the Indians wish them to be construed. The rules of construction do not permit the clear intent of the treaties to be disregarded.

The Court in Menominee Indian Tribe of Wisconsin v. Thompson, 922 F.Supp. 184, (198-199), (W.D. Wis. 1996) described the rules of construction as follows:

It is well known that Indian treaties must be interpreted as the Indians understood them, that doubtful expressions are to be resolved in favor of the Indians and that treaties must be construed liberally in favor of the signatory tribes. ... treaties are not to be construed by "the technical meaning of [their] words to learned lawyers, but in the sense in which they would naturally be understood by the Indians." *Id.*

Determining the Indians' understanding may require expert testimony to explain the historical and cultural context in which the Indians viewed the treaty provisions. *See, e.g. McClanahan v. State Tax Comm'n of Arizona*, 411 U.S. 164, 174, 93 S.Ct. 1257, 1263, 36 L.Ed.2d 129 (1973) ... ("Doubtful expressions are to be resolved in favor of the weak and defenseless people who are the wards of the nation, dependent upon its protection and good faith."); *Winters v. United States*, 207 U.S. 564, 576-77, 28 S.Ct. 207, 211, 52 L.Ed. 340 (1908) ("ambiguities occurring [in treaties] will be resolved from the standpoint of the Indians").

It is true that "[t]he canon of construction regarding the resolution of ambiguities ... does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress." *South Carolina v. Catawba Indian Tribe*, 476 U.S. 498, 506, 106 S.Ct. 2039, 2044, 90 L.Ed.2d 490 (1986). *See also Amoco Production Co. v. Gambell*, 480 U.S. 531, 555, 107 S.Ct. 1396, 1409, 94 L.Ed.2d 542 (1987) (citing *Catawba Indian Tribe*); *Choctaw Nation*, 318 U.S. at 432, 63 S.Ct. At 678 ("even Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties").

Moreover, many of the issues of treaty construction that are likely to arise in the permitting process, have already been determined by the Courts⁶. Thus, the first step in

⁶Even if the case law is not dispositive of the specific issue, it may provide rationale or additional information which will aid in the decision process. Additionally, it is recommend that Office of Counsel (or similar resource) be consulted before making a determination, in questionable cases, whether a treaty right exists or does not exist and whether the proposed

construing a treaty should be to review any Court decision that may be relevant.

5. How can we determine if treaty rights may be an issue with respect to a specific permit application?

The geographic extent⁷ of all treaty rights and Tribal resources should be known to the regulatory staff. If the proposed activity could have any effect within that geographic area the treaties should be reviewed to determine if treaty rights may be affected. A determination should also be made as to whether the proposed activity may affect Tribal resources. Most importantly, the Indian Tribes that may be affected by the permitted activity should be apprised of the permit application and be given the opportunity to comment or consult with the Corps. If any Tribe asserts that the proposed permit activity would impinge on or abrogate its treaty rights or would negatively impact its resources, it should be requested⁸ to provide all substantiating information it has available as to: (1) the existence of treaties, (2) claimed treaty rights, (3) any Court cases relevant to the Tribe's assertions, (4) an explanation of how the proposed activity would violate treaty rights, (5) identification of any Tribal resources that may be impacted, (6) an explanation of how the proposed activity would impact Tribal resources, and (7) a description of how the proposed activity would impact the Tribe⁹. BIA should also be informed of any proposed activity (needing a Corps permit) that might impact Tribal resources and should be requested to identify any treaty rights or Tribal resources that may be impacted by the proposed permit.

6. Does the Corps have a trust responsibility to protect Tribal resources from environmental degradation that may result from the proposed permit activity?

The Corps must consider the effect that the activity needing a Corps permit would have on the Tribe's resources, however, the fact that the Tribe's resource may be degraded, or reduced in value or utility, does not necessarily compel denial of the permit. This principle was explained by the Court in Nez Perce Tribe v Idaho Power Co., 847 F.Supp. 791 807-813 (D.Idaho 1994) in a

permit will or will not violate those rights.

⁷Including the area within the external boundaries of any Indian reservation and the geographic area in which usufructuary rights, if any, may be exercised.

⁸The Tribes are not required to respond.

⁹This request would be made to afford the Tribes every practicable opportunity to present their views. Neither the failure of the Tribes to respond nor a response from the Tribes relieves the Corps of its obligation to consider all impacts the proposed activity would have on any treaty rights or any impacts to Tribal resources that Corps is aware of, or reasonably should have been aware of. See also Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995).

case concerning permanent usufructuary rights¹⁰, as follows:

... In other words, the Tribe argues that developments such as dams which damage, reduce or destroy the fish runs violate their 1855 Stevens treaty fishing rights and entitles them to an award of monetary damages.

b) Treaty Rights to Preservation of Fish Runs

The ultimate issue presented is whether the treaty provides the Tribe with an absolute right to preservation of the fish runs in the condition existing in 1855, free from environmental damage caused by a changing and developing society. Only if such a right exists is the Tribe entitled to an award of monetary damages.

The parties have cited, and the Court's own independent research has disclosed only three cases which directly address this ultimate issue. United States v. Washington (hereinafter "Washington 1982"), 694 F.2d 1374 (9th Cir. 1982); Muckleshoot Tribe v Puget Sound Power and Light, CV No. 472-72C2V (W.D. Wash. 1986); and Nisqually Tribe v. City of Centralia, No. C75-31 (W.D. Wash. 1981). However, Washington 1982 was vacated by the Ninth Circuit on other grounds in a subsequent en banc decision. United States v. Washington, 759 F.2d 1353 (9th Cir. 1985). Muckleshoot Tribe v. Puget Sound expressly relied on the Washington 1982 opinion which was not vacated until after the decision in Muckleshoot was issued. Therefore, it appears that this Court is required to address and determine an issue of first impression without the benefit of any binding guidance and direction. ...

... State regulation cannot discriminate against the Indian fishery. Puyallup II, 414 U.S. [44] at 48, 94 S.Ct. [330] at 333 [38 L.Ed.2d 254 [(1973)]]. This principle is broad enough to encompass discriminatory granting of permits for projects with potentially adverse environmental effects.

Id. At 1382.

In addition, the Ninth Circuit rejected the trial court's conclusion that other previous cases implied a general right to environmental protection of the fish: ...

Thus, according to the Ninth Circuit's persuasive reasoning in Washington 1982, the states may allow or even authorize development which reduces the number of fish in the annual runs as long as such action does not discriminate against treaty fishermen in determining what development will be authorized. Although the opinion was vacated on other grounds, the Court agrees with the

¹⁰The treaty at issue in the case has been interpreted as creating permanent usufructuary rights (non-exclusive) to fish in all of the Tribes usual and customary places. Not all usufructuary rights are permanent as some are subject to termination upon the occurrence of a defined event. For example, Chippewa usufructuary rights with respect to territory ceded by them to the United States are terminated or extinguished whenever the land is owned by private entities rather than the public. The (trust) duty to mitigate for damage to resources that may be harvestable pursuant to permanent usufructuary rights discussed by the Court in Nez Perce may not be applicable to usufructuary rights that can be terminated or extinguished in their entirety.

legal analysis in *Washington 1982*. In the Court's view, the Stevens treaties do not protect the Indians from degradation of the fish runs caused by development which is not part of a pattern of discrimination against Indian treaty fish runs.

... In the Court's view, the 1855 treaty does not provide a guarantee that there will be no decline in the amount of fish available to take. The only method that would guarantee such protection would be to prevent all types of development, whether or not it is discriminatory of Indian treaty rights. The Stevens treaties simply do not provide the Tribe with such assurance or protection.

... Stevens treaties require that any development authorized by the states which injure the fish runs be non-discriminatory in nature *see Fishing vessel*, 443 U.S. 658, 99 S.Ct. 3055, 61 L.Ed.2d 823 but does not, however, guarantee that subsequent development will not diminish or eventually, and unfortunately, destroy the fish runs.

7. Does the Corps trust responsibility to Indian tribes require mitigation for impacts to off reservation resources that the Tribes have a right to harvest (usufructuary rights)?

The answer to this question depends on the nature of the usufructuary rights reserved or held by the Tribes. All usufructuary rights are not alike. For example, courts have held that a number of Tribes in the Pacific Northwest have usufructuary rights that are permanent in nature and are not subject to termination¹¹. Those rights were held to have both a geographic component¹² and a component that entitled the Tribes to take a share of the available fish. Those courts have also held that while the Tribes were not entitled to be protected against off reservation activity that would result in a reduction of available fish, they were entitled to reasonable steps to mitigate adverse impacts from the activity.¹³ The theoretical basis for the holding that reasonable mitigation is required was explained in *United States v. State of Washington*, 506 F.Supp. 187, 203 (1980)¹⁴ as follows:

At the outset the Court holds that implicitly incorporated in the treaties' fishing clause is the right to have the fishery habitat protected from man-made

¹¹Other than by an Act of Congress.

¹²The right to fish forever in certain locations defined in the Treaty.

¹³"We do not find such an obligation in the treaty. Where the decision to allow development is not tinged with any discriminatory animus, the treaty fishing clause, as we read it, does not require compensation of the Indians on a make whole basis if reasonable steps, in view of the available resources and technology, are incapable of avoiding a reduction in the amount of available fish." *U.S. v. State of Washington*, 694 F.2d 1374, 1386 (1983)

¹⁴The Court's decision was vacated by the Ninth Circuit on other grounds in "*U.S. v. State of Washington*, 694 F.2d 1374. See also question 6.

despoilation. Virtually every case construing this fishing clause has recognized it to be the cornerstone of the treaties and has emphasized its overriding importance to the tribes. ... The Indians understood, and were led by Governor Stevens to believe, that the treaties entitled them to continue fishing in perpetuity and that the settlers would not qualify, restrict, or interfere with their right to take fish. ...

In contrast to the Pacific Northwest cases, the Chippewa in Wisconsin and Minnesota have been found to have usufructuary rights to hunt, fish and gather that are extinguished upon the land passing to private ownership¹⁵. Thus the underlying rationale in the Pacific Northwest cases - perpetual usufructuary rights - for requiring mitigation, as a trust responsibility, is not present with respect to the Chippewa's usufructuary rights. Moreover, a determination that the United States' trust obligations would require it to ensure that mitigation would be performed would be logically inconsistent with case law which has held that the usufructuary rights were extinguished when the land over which they originally could have been exercised passed to private ownership. Under the relevant case law no compensation would be due the Tribes, even if all of the land passed to private ownership, as it was understood that usufructuary rights "were subject to and limited by the demands of the settlers." Lac Courte Oreilles Band v. State of Wisconsin, 760 F.2d 177, 183 (1985)

Therefore, the specific usufructuary right in question should be examined to determine if mitigation would be required as a trust obligation. However, even if it is determined that mitigation would be required, it is not unlikely that mitigation that is or would be required in conjunction with the permit, even absent a trust responsibility,¹⁶ would be sufficient to satisfy any Government trust obligation to mitigate.¹⁷

8. Does the Corps trust responsibility to Indian Tribes require mitigation for adverse impacts to Tribal resources on reservations?

Each treaty at issue must be reviewed to determine what is or is not required under that treaty. Under the rationale of the Pacific Northwest cases it would appear that mitigation, to the extent reasonable and practicable is owed. However, those cases do not indicate that there is an environmental servitude owed the Tribes such that mitigation must ensure that there is no net adverse effect resulting from the federal action. In fact, the Court in United States v. State of

¹⁵Lac Courte Oreilles Band, Etc. v Voigt, 700 F.2d 341 (1983) and Lac Courte Oreilles Band v. State of Wisconsin, 760 F.2d 177.

¹⁶Mitigation that would be required of the applicant even if there were no usufructuary rights or trust obligation to mitigate.

¹⁷See Pyramid Lake Paiute Tribe v. U.S. Department of Navy, 898 F.2d 1410 (9th Cir. 1990); Havasupai Tribe v. United States, 752 F. Supp. 1471 (D. Ariz. 1990); and Nance v. Environmental Protection Agency, 645 F.2d 701 (1981)

Washington, 694 F.2d 1374 (1982) has indicated that a resource may be rendered valueless without abrogation of treaty rights or trust responsibilities¹⁸. As stated by that Court at page 1381 "Any right may be subject to contingencies which would render it valueless." and at page 1382:

The spectre the district court raises of tribal fishermen unprotected by the environmental right dipping their nets into the water and bringing them out empty, 506 F.Supp. at 203, cannot alter the scope of Fishing Vessel. Only the extension of the servitude to ban even non-discriminatory development occurring both within and without treaty fishing areas assure against any decline in the amount of fish taken. The treaty does not grant such assurance.

It is also not unlikely that any trust obligation owed to require mitigation would be satisfied by mitigation that would be required in conjunction with the 404 permit process, absent a trust obligation.

Accordingly, mitigation, to the extent it is reasonable and practicable, for impacts to Tribal resources sited on reservations should be required.

9. May an activity whose impact to a reservation's resources be such that it would defeat the purpose for which the reservation was established be permitted?

Before one can begin to address this question, in practice, the terms of the treaty in question must be examined to determine if the Treaty specifically contemplates the activity to be permitted and if that activity, under the terms of the treaty takes precedence over or is subservient to the interests of the Tribe¹⁹. Assuming the treaty is not dispositive, the following is applicable.

I am not aware of a line of cases directly addressing this issue; however, Pyramid Lake Paiute Tribe of Indians v. Morton, 354 F.Supp. 252 (1973) gives us guidance as to how one court decided the issue and may be illustrative of how such issues would be decided in the future. The case concerned the Department of Interior's regulation, which the Tribe contended delivered "more water to the District than required by applicable court decrees and statutes, and improperly diverts water that otherwise would flow into nearby Pyramid Lake located on the Tribe's

¹⁸This discussion is not applicable to impacts which would defeat the purpose for which the reservation was established.

¹⁹See Sokaogon Chippewa Community v. Exxon Corp., 805 F.Supp. 680, 706 (E.D.Wis, 1992) "If the Sokaogon were to prevent Exxon from mining on the subject territory, it would be in contravention of the very considerations prompting the two treaties. Even assuming that the Sokaogon have rights in the land, the language and intent of the 1842 and 1854 Treaties demand that mineral development should take precedence over those rights.

reservation.” Although the Court could have analyzed the case under the Winters doctrine²⁰ It chose not to do so. The Court noted, at pages 254-255, that:

This Lake has been the Tribe’s principal source of livelihood. Members of the Tribe have always lived on its shore and have fished its waters for food. ...

Recently, the United States, by original petition in the Supreme Court of the United States, filed September, 1972 claims the right to use sufficient water of the Truckee River for the benefit of the Tribe to fulfill the purposes for which the Indian Reservation was created, “including the maintenance and preservation of Pyramid Lake and the maintenance of the lower reaches of the Truckee as a natural spawning ground for fish and other purposes beneficial to and satisfying the needs of the Tribe. ...

The Court then determined (page 256) that:

... The Secretary’s duty was not to determine a basis for allocating water between the District and the Tribe in a manner that hopefully everyone could live with for the year ahead. This suit was pending and the Tribe had asserted well-founded rights. The burden rested on the Secretary to justify any diversion of water from the Tribe with precision. It was not his function to attempt an accommodation.

In order to fulfill his fiduciary duty, the Secretary must insure, to the extent of his power that, that all water not obligated by court decree or contract with the District goes to Pyramid Lake.

Accordingly, should the Corps determine that an activity needing a Corps permit would impact the reservation’s resources to an extent that they would defeat the purpose for which the reservation was established the permit should be denied.²¹

10. What is the Winter’s doctrine and is it applicable to permit decisions?

Felix S. Cohen’s Handbook of Federal Indian Law, 1982 Edition, pages 575 to 576 offers a good explanation of the doctrine:

The Supreme Court first articulated this doctrine in Winters v. United States in 1908 and reaffirmed it in 1963 in Arizona v. California. Cappaert v.

²⁰Winters v. United States, 207 US 564, (1908)

²¹It is likely that if the impacts were so great as to defeat the purpose of the reservation that, even without considering the Corps’ trust obligations, the permit would be denied as not being in the public interest. (A permit whose impact would deprive any community of the ability to maintain a moderate living standard is not likely to be in the public interest.)

United States contains the Court's most succinct and lucid statement of the governing principles of reserved water rights:

This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of reservation and is superior to the rights of future appropriators. ... The doctrine applies to Indian reservations and other Federal enclaves, encompassing water rights in navigable and nonnavigable streams.

In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purpose for which the reservation was created.

This doctrine arose and has been applied extensively in appropriative water law states (generally western states that have limited supplies of water). The doctrine has not been applied to riparian water law states and may not be applicable to them.

11. When, in the permitting process sequence, should the Corps trust obligations be considered?

Since the Tribal trust issues, alone, may be determinative²² of the outcome of the permit decision, those issues should be considered immediately after or in conjunction with consideration of the avoidance issue.

12. If the Tribal trust issues are not dispositive of the permitting decision, do we need to consider the Tribe's concerns further?

Yes. The Tribal concerns and the impacts of the proposed activity on Tribal resources should be considered in the public interest review just as any other similarly sized community would be. Such consideration should not be evaluated based on Tribal trust responsibility considerations²³ but should take into account the relative impact the proposed activity would have

²²For example, if the permitted activity would violate a treaty provision, the permit application would be denied.

²³These considerations should have been addressed previously.

on the community²⁴. The same impact to natural resources may have a greater effect on individual Indians than it would on non-Indians, not only because of greater dependence on those resources, but also because the individual Indian may be more closely tied to the defined land area than his non-Indian counterpart. Additionally, any spiritual or cultural impact to the Tribe that would result from the proposed permit activity should be evaluated in the public interest review.

13. Should the Corps apply different criteria to permit applications for activities within a reservation's exterior boundaries than would be applied to a permit application for activities outside a reservation's exterior boundaries?

No. The criteria applied should be the same. However, it is very likely that an activity that is sited within the reservation's exterior boundaries would have a greater impact on Tribal resources than would an activity that is sited off reservation. Moreover, the applicant would still have to comply with all applicable local regulations, thus the Tribe may be able to impose its requirements²⁵ on the applicant. Such requirements would be independent of and in addition to any Corps' permit requirement or condition. Further, if the Tribe has jurisdiction over the activity and exercises its jurisdiction to prohibit the activity²⁶ the permit application to the Corps should be denied without prejudice.

14. Who is the Federal Trust Obligation owed to?

The Trust obligation is owed to Federally Recognized Indian Tribes.

Edwin C. Bankston
District Counsel

²⁴For example, an activity that would diminish the supply of game may affect Indian communities to a greater degree than non-Indian communities, because the Indian community may be more dependent on game than the non-Indian community. This greater importance to the Indian community should be factored into the evaluation.

²⁵Including preventing the activity if the Tribe has sufficient authority to do so.

²⁶Such as denying a required Tribal permit.



United States Department of State

Washington, D.C. 20520

FEB 12 2016

The Honorable
Bernie Sanders
United States Senate
Washington, DC 20510

Dear Senator Sanders:

Thank you for your letter of October 23, 2015 regarding Enbridge Energy, LP and the replacement of its Line 3 pipeline. The Department also appreciates your interest in our review of Enbridge's Presidential Permit application seeking authorization for increased throughput in the border segment of Enbridge's existing Line 67 pipeline, formerly known as the Alberta Clipper pipeline. We sincerely regret the delay in responding to your inquiry.

As you may know, Enbridge's recent construction of interconnections between the Line 67 pipeline and the Line 3 pipeline were the subject of litigation against the Department in the United States District Court for the District of Minnesota. We welcomed the court's decision in December that the Department's actions at issue in the case were not subject to judicial review and that the related claims would be dismissed.

Regarding Enbridge's Presidential Permit application for the border segment of Line 67, the Department is considering the application pursuant to Executive Order 13337, and we are conducting a rigorous, transparent, and objective review. As part of that review, we are preparing a draft Supplemental Environmental Impact Statement (SEIS) to analyze the project's potential environmental impacts in the United States. We hope to have the draft SEIS available for public comment in the coming months.

We hope this information is useful. Please do not hesitate to contact us again if we can be of any further assistance on this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Julia Frifield".

Julia Frifield
Assistant Secretary
Legislative Affairs

HYDROLOGICAL AND BIOGEOCHEMICAL RESEARCH IN THE SHINGOBEE RIVER HEADWATERS AREA, NORTH-CENTRAL MINNESOTA

U.S. GEOLOGICAL SURVEY
Water-Resources Investigations Report 96-4215



Vern Peterson

From: "Rosenberry, Donald" <rosenber@usgs.gov>
To: "Vern Peterson" <marylake@unitelc.com>
Sent: Monday, August 11, 2014 12:55 PM
Attach: Delin etal USGS-FS98.pdf; Delin&Herkelrath GWM&R14.pdf
Subject: Re: Vern Peterson
Vern,

It was great to talk to you this morning after quite a few years. I'm glad all's well (except for the silt in the lake) up your way. As for the proposed pipeline, attached are two papers that you might find useful. The paper published in 1998 gives a nice overview of the oil spill, cleanup, and evolution of the oil plume in the aquifer. The 2014 paper talks more about removing oil with a shallow groundwater pump. It is a bit more technical but it might be useful nonetheless.

As for aquifers in the area, an unconfined "water-table" aquifer extends beneath just about all of Hubbard County. This would be the first aquifer to be contaminated by any oil spill and this is the type of aquifer that is being monitored at the Bemidji oil-spill study site. Most private water-supply wells are installed in sands that are beneath the shallow unconfined aquifer. The well screen and surrounding sediments from which groundwater is pumped are often separated from the shallow aquifer by one or more layers of silt or clay that would prevent or greatly slow movement of oil to a pumping well, assuming that the well was drilled and completed correctly. Unfortunately, some wells are not sealed very well and they can allow movement of shallow, contaminated water down to a well screen when the well is being pumped. Once oil gets beneath a confining layer and into the deeper sediments it is much more difficult and sometimes virtually impossible to remove.

Don

On Mon, Aug 11, 2014 at 9:37 AM, Vern Peterson <marylake@unitelc.com> wrote:

Don, I don't think I got my e-mail in correctly marylake@unitelc.com This is correct. Vern Peterson

--

Donald Rosenberry
U.S. Geological Survey
Box 25046, MS 413
Denver, CO 80225-0046
303-236-4990
303-704-6588 cell
rosenber@usgs.gov
<http://profile.usgs.gov/rosenber/>



NOTICE OF AVAILABILITY OF SCOPING EAW AND DRAFT SCOPE FOR SANDPIPER PIPELINE AND LINE 3 REPLACEMENT PROJECTS AND SCHEDULE FOR EIS SCOPING MEETINGS

Issued: April 11, 2016

Project Description

Sandpiper Pipeline Project

The North Dakota Pipeline Company LLC (NDPC) is proposing to construct and operate a new 616-mile oil pipeline that would extend from Beaver Lodge Station, south of Tioga, North Dakota through a new terminal at Clearbrook, Minnesota and then on to an Enbridge affiliate's terminal and tank farm in Superior, Wisconsin.

The proposed project, called the Sandpiper Pipeline project (or Sandpiper), includes about 303 miles of new pipeline in Minnesota. NDPC is proposing to install 24-inch diameter pipeline from the North Dakota border to Clearbrook, and 30-inch diameter pipeline from Clearbrook to the Wisconsin border. The project also includes construction of a new oil terminal at Clearbrook and upgrades to the existing Pine River facility.

The proposed project is located in Polk, Red Lake, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

Line 3 Replacement Project

Enbridge Energy, Limited Partnership (Enbridge) is proposing the Line 3 Replacement project in order to address safety and integrity issues associated with the existing Line 3 pipeline. The pipeline replacement is proposed to follow existing Line 3 from the Minnesota-North Dakota border to Clearbrook and then follow the same route proposed for the Sandpiper pipeline from Clearbrook to the Minnesota-Wisconsin border. The Line 3 route is approximately 337 miles long in Minnesota. The project also includes upgrades to existing pump stations at Clearbrook, Donaldson, Plummer, and Viking, and construction of new pump stations at Backus, Cromwell, Palisade, and Two Inlets.

The proposed project is located in Kittson, Marshall, Pennington, Red Lake, Polk, Clearwater, Hubbard, Wadena, Cass, Crow Wing, Aitkin, and Carlton counties.

Meeting Information		
DATE	TIME	LOCATION
Monday, April 25, 2016	6:00 pm – 9:00 pm	Tobies Restaurant and Bakery 404 Fire Monument Road Hinckley, MN 55037
Tuesday, April 26, 2016	6:00 pm – 9:00 pm	The Falls Ballroom 15870 Minnesota 27 Little Falls, MN 56345
Wednesday, April 27, 2016	6:00 pm – 9:00 pm	Crookston Inn & Convention Center 2200 University Ave Crookston, MN 56716
Thursday, April 28, 2016	6:00 pm – 9:00 pm	Ralph Engelstad Arena 525 Brooks Ave North Thief River Falls, MN 56701
Monday, May 2, 2016	6:00 pm – 9:00 pm	Bemidji State University 1500 Birchmont Dr. NE #31 Bemidji, MN 56601
Tuesday, May 3, 2016	10:00 am – 1:00 pm	American Legion 900 East 1st Street Park Rapids, MN 56470
Tuesday, May 3, 2016	6:00 pm – 9:00 pm	Park Rapids Century School 501 Helten Avenue Park Rapids, MN 56470
Thursday, May 5, 2016	10:00 am – 1:00 pm	Black Bear Casino Resort 1785 MN-210 Carlton, MN 55718
Thursday, May 5, 2016	6:00 pm – 9:00 pm	Black Bear Casino Resort 1785 MN-210 Carlton, MN 55718
Monday, May 9, 2016	6:00 pm – 9:00 pm	Saint Paul RiverCentre 175 West Kellogg Boulevard Saint Paul, MN 55102
Tuesday, May 10, 2016	3:00 pm – 6:00 pm	Rice Lake Community Center 13830 Community Loop Bagley, MN 56621
Wednesday, May 11, 2016	10:00 am – 1:00 pm	East Lake Community Center 36666 State Highway 65 McGregor, MN 56718

- Each meeting will include an informal open house (1 hour), a formal presentation by state agency staff (30 minutes), and an opportunity for public comments (1.5 hours).
- State agency staff members will facilitate the meeting and are available to respond to questions about the permitting process and the project.
- NDPC and Enbridge (applicants) staff will also be available to answer questions about the proposed projects during the informal open house.
- You may add verbal comments, written comments, or both into the record. A court reporter will be available to take verbal comments, and comment cards will be available for people who wish to provide written comments for the public record.

Comment Period Written comments will be accepted through **Thursday, May 26, 2016** online or by mail.

Online www.sandpipeline3.us

Email Pipeline.Comments@state.mn.us

U.S. Mail Jamie MacAlister, Environmental Review Manager
Minnesota Department of Commerce
85 7th Place East, Suite 500
St. Paul MN 55101

Fax 651-539-0109

Important Comments will be made available to the public via the PUC's and the Department of Commerce's websites, except in limited circumstances consistent with the Minnesota Government Data Practices Act. Personally identifying information is not edited or deleted from submissions. Please include the PUC Docket Numbers (Sandpiper: PL-6668/CN-13-473 and PPL-13-474, Line 3: PL-9/CN-14-916 and PPL-15-137) in all communications.

Note: Each project will have its own scope and EIS, however, public meetings will address both projects.

Eminent Domain: If issued a route permit by the PUC, Enbridge and NDPC may use the power of eminent domain to take land for this project. Any new easement or right-of-way agreements reached between Enbridge/NDPC and landowners before a pipeline route permit is issued will not be considered in the PUC's final decision.

How to Learn More

Department of Commerce Project Website (documents are available at these websites):

Sandpiper: <http://mn.gov/commerce/energyfacilities/Docket.html?Id=33599>

Line 3: <http://mn.gov/commerce/energyfacilities/Docket.html?Id=34079>

Project Mailing List: Sign up to receive notices about project milestones and opportunities to participate (meetings, comment periods, etc.). Contact docketing.puc@state.mn.us, 651-201-2204, or 1-800-657-3782 with the docket number (*Sandpiper: 13-473 & 13-474*) or (*Line 3: 14-916 & 15-137*), your name, mailing address, and email address.

Full Case Record: See all documents filed in this docket via the PUC's website - mn.gov/puc, select *Search eDockets*, enter the year (*13*) and the docket number (*473*) for the Sandpiper CN or (*13*) and (*474*) for the Sandpiper Route Permit, then select *Search*. Enter the year (*14*) and the docket number (*916*) for the Line 3 CN or (*15*) and (*137*) for the Line 3 Route Permit, then select *Search*.

Community Locations: The Draft Scoping Decision Documents and Scoping EAWs will be available at the following locations in communities crossed by the proposed pipelines:

- Township Clerk
- City Clerk
- County Auditor or Administrator
- Public Libraries:
 - Hennepin County Library – Minneapolis Central, 300 Nicollet Mall, Minneapolis
 - Bemidji Public Library, 509 American Avenue NW, Bemidji
 - Crookston Public Library, 110 North Ash Street, Crookston
 - Duluth Public Library, 520 W Superior Street, Duluth
 - Kitchigami Regional Library, 212 Park Ave., PO Box 14, Pine River
 - East Central Regional Library, 244 So. Birch Street, Cambridge
 - Great River Regional Library, 1300 West St. Germain, St. Cloud

Available on CD: You may contact DOC-EERA staff to request copies of these documents on CD (see contact information below).

Minnesota Statutes and Rules: The certificate of need application is reviewed under Minnesota Statute 216B and Minnesota Rules Chapter 7853. The pipeline route permit application is reviewed under Minnesota Statute 216G and Minnesota Rules Chapter 7852. The EIS will be reviewed under Minnesota Rules Chapter 4410.2000.

Minnesota Statutes and Rules are available at www.revisor.mn.gov.

Project Contacts

Public Utilities Commission Energy Facilities Planner

Scott Ek – scott.ek@state.mn.us or 651-201-2255

Department of Commerce Environmental Review Manager

Jamie MacAlister – Pipeline.Comments@state.mn.us 651-539-1775 or 1-800-657-3794

Enbridge Energy, Limited Partnership Project Contact

www.Enbridge.com/L3andSPP – enbridgeinmn@enbridge.com or 1-855-788-7805

North Dakota Pipeline Company, LLC Project Contact

www.Enbridge.com/L3andSPP – enbridgeinmn@enbridge.com or 1-855-788-7805

This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing or speech disabilities may call us through their preferred Telecommunications Relay Service.

If any reasonable accommodation is needed to enable you to fully participate in these meetings (e.g., sign language, foreign language interpreter, large print materials), please contact the PUC at 651-296-0406 or 1-800-657-3782 at least one week in advance of the meeting.

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Notice of Availability of Scoping EAW and Draft Scope for Sandpiper Pipeline
and Line 3 Replacement Projects and Schedule for EIS Scoping Meetings**

Docket No. PL 6668/CN-13-473 and PL6668/PPL-13-474

Dated this 12th day of April 2016

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_13-473_Official Service List - CC
David	Barnett	daveb@uanet.org	United Association of Journeymen & Apprentices	1300 Derek Street Haskell, OK 74436	Electronic Service	No	OFF_SL_13-473_Official Service List - CC
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There Will Be More New Jobs in Solar Than Oil by the End of the Year

- by [Jonathan Chew](#) @sochews
April 20, 2016, 10:00 AM EDT
<http://fortune.com/2016/04/20/solar-oil-jobs-indeed/>



Workers Stephen Janota, left, and Matt Bart, install Solar Service Inc. photovoltaic (PV) solar electric panels on the roof of a home in Park Ridge, Illinois, U.S., on Tuesday, Sept. 10, 2013. Photograph by Tim Boyle—Bloomberg via Getty Images

Indeed just released this startling info on energy jobs.

The world's biggest oil companies [are slashing jobs](#) to cope with decreasing revenues, and one knock-on effect has been the drop in oil job postings.

Conversely, however, if the current pace of postings hold, solar would become the largest market for energy jobs by the fourth quarter of 2016, according to numbers tabulated by Indeed, the [world's highest traffic job site](#).

According to data provided to Fortune, job postings for the solar industry currently make up 39% of global energy-related work on Indeed, whereas oil jobs account for 50%. (Indeed declined to release the actual job posting figures.)

But that relationship is changing—over the past two years, oil job postings are declining by around 12.6% every quarter, while solar jobs are dropping at an average of 1.7% per quarter.

At this rate, solar will overtake oil for job postings by the end of the year:

Solar And Oil Job Postings On Indeed.com

According to job site Indeed, solar job postings are expected to surpass oil jobs by the end of 2016. This chart shows the number of solar and oil jobs for every one million total job postings



“The decline in oil prices has not just rocked that industry, but jobs linked to both fossil fuels and renewable energy,” said Tara Sinclair, chief economist at Indeed. “Whether or not solar overtakes oil on Indeed, energy workers would do well to position themselves for work in renewable fields such as solar, wind, and hydroelectricity.”

This corresponds with [a recent report](#) by The Solar Foundation that highlighted the rapid growth of the U.S. clean energy sector. By the end of this year, the solar sector should have 240,000 workers under its wings, and currently employs around 77% more workers than the coal mining industry.

The world’s largest oil companies, [in a battle to fight](#) the effects of a 60% plunge in oil prices over the past 18 months, have been brutally cutting jobs. BP [BP](#) - 0.54% , sixth on the [Fortune 500](#), said it would cut 7,000 jobs by 2017, or almost 9% of its workers. Late last year, Chevron [CVX](#) 0.11% [said](#) that it would cut 10% of its workforce, or 6,000 to 7,000 jobs.

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
600 North Robert Street St. Paul, Minnesota 55101

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 Seventh Place East Suite 350 St. Paul, Minnesota 55101-2147

In the Matter of the Applications of
North Dakota Pipeline Company LLC
for a Certificate of Need and Pipeline
Routing Permit for the Sandpiper
Pipeline Project

MPUC Docket No. PL-6668/CN-13-
473 OAH Docket No. 8-2500-31260

MPUC Docket No. PL-6668/PPL-13-
474 OAH Docket No. 8-2500-31259

HONOR THE EARTH'S
MOTION FOR RECONSIDERATION OR CLARIFICATION

To: Administrative Law Judge Eric L. Lipman, Minnesota Department of
Commerce and Applicant Enbridge and Applicant Enbridge d/b/a/NDPC

Honor the Earth does now serve and file its Motion for Reconsideration or
Clarification by the Tribunal with regard to the Seventh Prehearing Order issued by
the Honorable Judge Lipman on May 20, 2014, with regard to Oral Arguments on
May 7, 2014 and *Honor the Earth's* Motion to Dismiss based on lack of
jurisdiction, which was denied.

INTRODUCTION

Honor the Earth specifically argued the 1825 and 1826 Treaties with the Chippewa, with regard to the jurisdiction challenge of whether Minnesota has complete and unilateral authority to grant the Sandpiper pipeline routing permit.

Honor the Earth specifically requested the inclusion of the 1825 and 1826 Treaties, which were provided in the PUC *revised packet* of treaties for oral arguments before this Tribunal on May 7.

Honor the Earth argued that the 1826 Treaty, which was a confirmation treaty for the 1825, included express and specific language describing that the grant from the Chippewa was "not to affect the title to the land, nor the existing jurisdiction over it."¹ At oral arguments *Honor the Earth* conceded that title to the land for most of the proposed Sandpiper route had been affected by the 1855 Treaty.

However, *Honor the Earth* does not see any judicial deliberation focused on the initial 1825 and 1826 jurisdictional treaty arguments. This Tribunal's Seventh Prehearing Order begins with "II. 1855 Treaty and pipeline routing permits", without any comment as to whether, how, or when---prior, expressly reserved (not granted) Chippewa jurisdictional treaty rights apply.

The Tribunal recognized that "Honor the Earth argues that the usufructuary

¹ See Honor the Earth's Memorandum of Law, dated April 7, 2014 at page 4.

rights in the lands ceded under the 1855 were not surrendered with the land sale in that treaty.” When asked for supporting case law *Honor the Earth* directed the Tribunal to the Syllabus of the *Mille Lacs* decision. The relevant section (not named at the hearing) is (B) wherein the

Mille Lacs Band did not relinquish its 1837 Treaty rights in the 1855 Treaty by agreeing to “fully and entirely relinquish and convey to the United States, any and all right, title, and interest, of whatsoever nature the same may be, which they may now have in, and to any other lands in the Territory of Minnesota or elsewhere.” That sentence does not mention the 1837 Treaty or hunting, fishing, and gathering rights. ***In fact, the entire 1855 Treaty is devoid of any language expressly mentioning usufructuary rights or providing money for abrogation of those rights. These are telling omissions, since federal treaty drafters had the sophistication and experience to use express language when abrogating treaty rights. The historical record, purpose, and context of the negotiations all support the conclusion that the 1855 Treaty was designed to transfer Chippewa land to the United States, not terminate usufructuary rights. Oregon Dept. of Fish and Wildlife v. Klamath Tribe, [473 U.S. 753](#), distinguished. Pp. 21—29.***²

The Tribunal’s “Legal Analysis” begins by making a statement that is contrary to the above Syllabus block quote and what *Honor the Earth* was conceding. *Honor the Earth* conceded that the Chippewa Bands in Minnesota had not initiated litigation like Mille Lacs Band v Minnesota for the 1837 Treaty ceded territory or Fond du Lac v. Gov. Carlson for the 1854 Treaty ceded territory, or other federal declaratory judgment or injunction action for the 1855 ceded territory usufructuary rights. *Honor the Earth* did assert and argue that the State of

² See full Syllabus of Minnesota v. Mille Lacs attached as Exhibit 1.
Honor the Earth’s
Motion for Reconsideration or Clarification
MPUC 13-474, p. 3

Minnesota, Minnesota Counties and Land Owners³ raised the 1855 Treaty as an affirmative defense, counter-claim or "1855 quiet title" argument, which then was necessarily and completely examined by the federal courts, the Eighth Circuit Court of Appeals and the United States Supreme Court. Thus, *Honor the Earth's* citing the Mille Lacs Syllabus was shorthand for the Supreme Court decision holding that usufructuary rights were never surrendered in the 1855 Treaty, nor any record of compensation proving abrogation by Congress.

Abrogation is very important to the present analysis because not only is the question about whether or not treaty rights were surrendered, but more importantly under U.S. v. Dion, were the Chippewa compensated for the taking? If no compensation, or other act of Congress, no taking of usufructuary rights can be shown. The question of surrendering is important for the 1826 Treaty right for “jurisdiction” also not being affected, or if it was, when, where and how was that compensation paid under Dion?

The Tribunal clearly studied the Operation Square Hook decisions dismissing federal Lacey Act cases due to 1855 Treaty rights. In those dismissals, Judge Tunheim pointed out in his decision that the usufructuary property rights are individual, but can be regulated by the tribal governments, and however in the case of the Chippewa treaties those rights are *exclusive* from the United States, but that

Congress can change that. Since the Chippewa rights are exclusive from the United States, Congress could never have passed on our jurisdictional rights to Minnesota, without some formal accounting by treaty, act and or compensation for the taking. That would be the place where the prior due process would have occurred for the taking, but did not, and now must be considered as part of this due process analysis.

The United States Supreme Court held in 1999 that the rights to hunt, fish and gather are not affected by the transfer of right, title and interest in the 1855 Treaty. *Honor the Earth* concedes there is no decided federal case law to cite with regard to 1825 and 1826 Treaties with the Chippewa. *Honor the Earth* recognizes that “[t]he Syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader” or the Tribunal when cited during oral arguments on May 7, 2014. Consequently, the Mille Lacs decision needs to be recognized for the important holdings about Chippewa treaty rights, especially for the 1855.

CONCLUSION

While *Honor the Earth* realizes that the Tribunal’s *opinion* may not ultimately change from “the Treaty does not forbid the creation of new rights of way on the land that was sold in 1855,” the 1826 Treaty specifically references “jurisdiction” over all the Chippewa ceded territories, including what became the

1855 land cession in Minnesota and should necessarily be addressed in a *jurisdictional* challenge.

Respectfully submitted May 27, 2014.

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Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of
North Dakota Pipeline Company
LLC, for a Certificate of Need for the
Sandpiper Pipeline Project In
Minnesota

OAH Dkt No. 8-2500-31260
PUC Dkt No. PL-6668/CN-13-473

**HONOR THE EARTH'S
MOTIONS FOR STAY OF SANDPIPER CERTIFICATE OF NEED
PROCEEDINGS AND TO CONSOLIDATE SANDPIPER AND LINE 3
CERTIFICATE OF NEED ON PRESENT LINE 3 PUC SCHEDULE**

To: The Public Utilities Commission (PUC)

Comes now *Honor the Earth* to motion the PUC to STAY any further
consideration of the Certificate of Need (CN) for the Sandpiper and

CONSOLIDATE the Sandpiper and Line 3 CN (14-916) PUC proceedings so that full, complete and proper, environmental examination and analysis can be given to the cumulative effects and impacts of at least Sandpiper and Line 3, so that meaningful decision-making may occur, by all stakeholders with federally and state recognized property interests and treaty rights.

In truth, Minnesota's environmental protection laws¹ are being circumvented by a four-way pipeline attack on northern Minnesota the lake regions with similar and redundant characteristics, which are examined and considered by the PUC as individual projects.² In reality all four are occurring within a three (3) year time period, and because of separate DOC³ treatment and application processes, which cause intentionally ignore the real climate change and environmental impact analysis of the real risks and dangers, *in there obvious risk and cost totality*.

Considering the “real world” environmental totalities, and recognizing that Enbridge as a *de facto* foreign corporation⁴ has 4 projects which directly risk and impact ultra-sensitive, clean water aquifers, wetlands, lakes and rivers of northern

¹ Minn. Stat. 116D *et seq* See Purpose of Minnesota Environmental Policy

² See Enbridge Clipper line 2010 (08-253), Enbridge Clipper expansion (Line 67) (13-153), Enbridge Sandpiper (Bakken) line, Enbridge Line 3 (tar sands) piggy back on Sandpiper route (all passing through Minnesota to Superior), and Minnesota Pipe Line Co Line 4 Expansion (Bakken) (14-320) for Koch refinery in Richfield, MN.

³ Department of Commerce does not regulate oil or pipelines, instead only providing a forum for determining Need expressed by application and route permits.

⁴ Enbridge n/k/a North Dakota Pipeline Company (NDPC) for this application and project.

Minnesota, it is readily apparent Enbridge is relying on the poor application of competing state laws to divide and minimize the risks, so that one pipeline is always the only amount of abstract risk considered by the DOC, ALJ, and PUC --- no matter how many pipelines are in the corridor, will be in the corridor, with various volumes and pressures, that all exponentially, multiply Minnesota's environmental pass through risks many times more, so that corporations, at the ends of the pipeline outside of Minnesota profit.

Divide and conquer?

Cumulative environmental and climatic change impacts analysis are completely missing from what is obviously one of the greatest saturations of oil pipeline risks. Together Sandpiper and Line 3 are carrying Tar sands and Bakken crude, which are some of the dirtiest crude oils on the planet, which both involve ultra-dangerous activities that require some of the most extreme extraction methods, which then compound degradation of adjacent environments and ecosystems, in and out of Minnesota, by knowingly-increasing, irreversible and negative, climate change impacts. Minnesota is downwind from both projects field operations, and much of the United States drinking water is downstream of the Headwaters of the Mississippi.

Here in the northland of Minnesota, clean water and clean air are not

considered alternatives but the actual NEED, for life, eco-tourism and often the cure for what ails folks from excessive civilization. Out of sight is out of mind until your senses are shocked (by unconscionable and unstoppable crude oil destruction) and can never forget the images now forever iconic: Exxon Valdez, Kalamazoo River, Gulf of Mexico BP spill, Clearbrook and Cohasset, MN, etc. This means without a free ride through treaty territories and Minnesota's lakes and rivers, wild rice and aquifers, Enbridge might lose profits and business to competitors⁵ or discover the Bakken crude and tars sands are not worth all the extreme extraction costs, much less transportation costs.

This is the time to pause and think ahead about whether and if, a smart corridor for ultra-dangerous, fracking and tar sands open pit mining activities to avoid three (3) of the most significant watersheds of the North American continent where millions of Americans get their drinking water every day, will be lost forever?

Honor the Earth and anyone without e-docket blinders for separate pipeline projects can see

Perhaps the most problematic aspect of the design of this proposed route is the continued expansion of terminal capacity at the Clearbrook location. Any pipelines that are built to transport material out of the Clearbrook terminal are forced to enter the largest

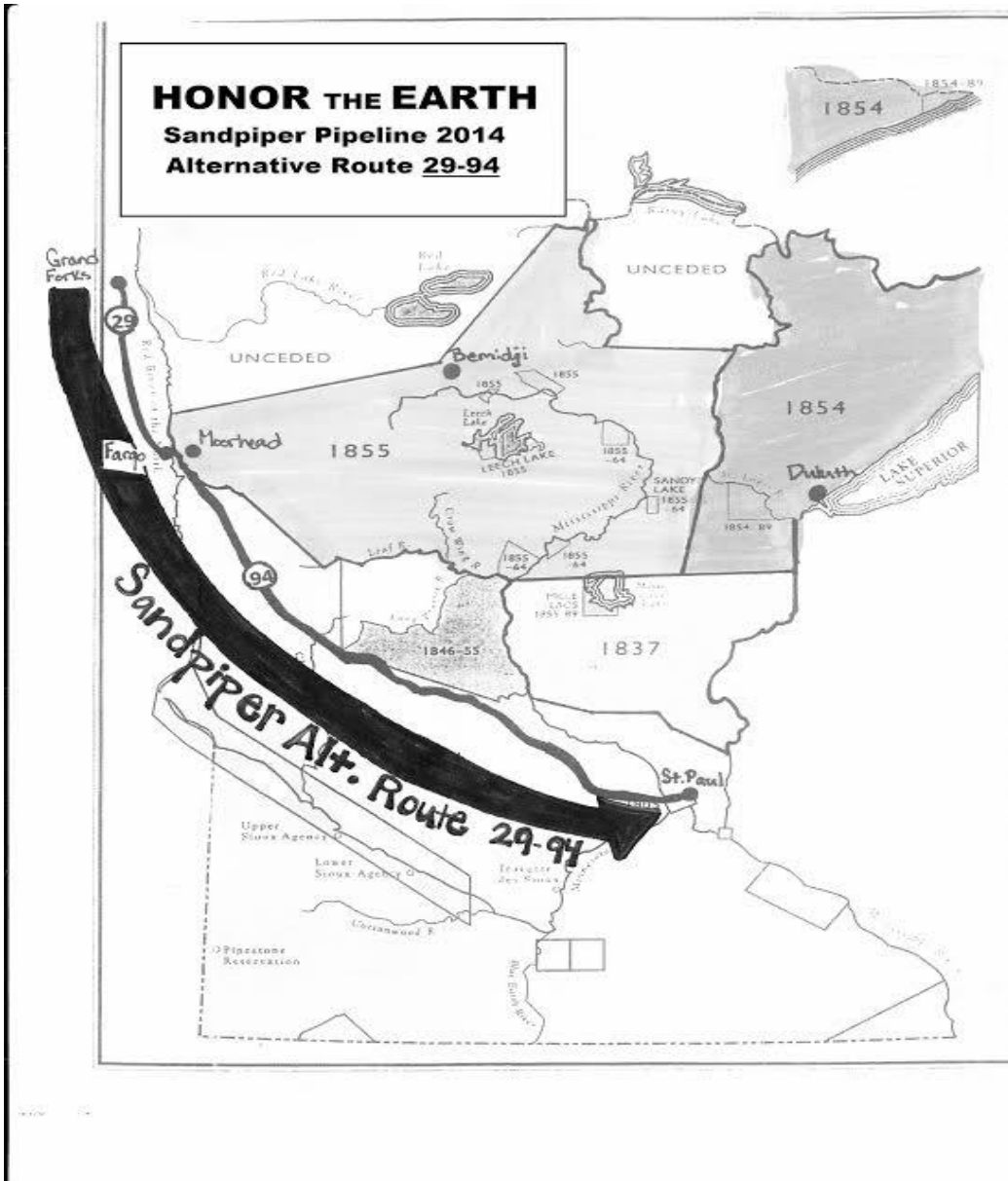
⁵ Minnesota Pipe Line Company, Line 4, to Richfield, MN.

concentration of lakes, streams, and open-water wetlands in the state.

Any route proposed out of Clearbrook, either south or east will cross dense expanses of open waters. A northern to eastern route from Clearbrook would cross massive wetland complexes and areas with stands of wild rice. If future, new terminals, were to be constructed in western Polk (could collect from Canada or North Dakota), Kittson (could collect from Canada or North Dakota) or even Clay counties (North Dakota) the creation a route proposal that avoids the greatest concentration of surface waters becomes feasible.

(See MPCA Comments—Supplemental Comments Replacing MPCA Letter dated May 30, 2014, at p. 15, filed with PUC as Doc 20146-100780-01. Emphasis added).

Translated into layman terms, the I-29 I-94 (System Alternative 8) makes the most common sense for Minnesota and the nation, BUT not the most dollars and cents for big oil, Enbridge, Marathon and our environment. The south of I-94 alternative avoids private lands, federal and state conservation areas, is easily accessible by pipeline workers and emergency equipment, in shorter periods of time. The longer route also provides more employment, although most of the pipeline workers for the Sandpiper will likely be the same people for Line 3, so while more “jobs” might be involved over time, not twice as many people working.



MORE PUBLIC MEETINGS AND HEARINGS

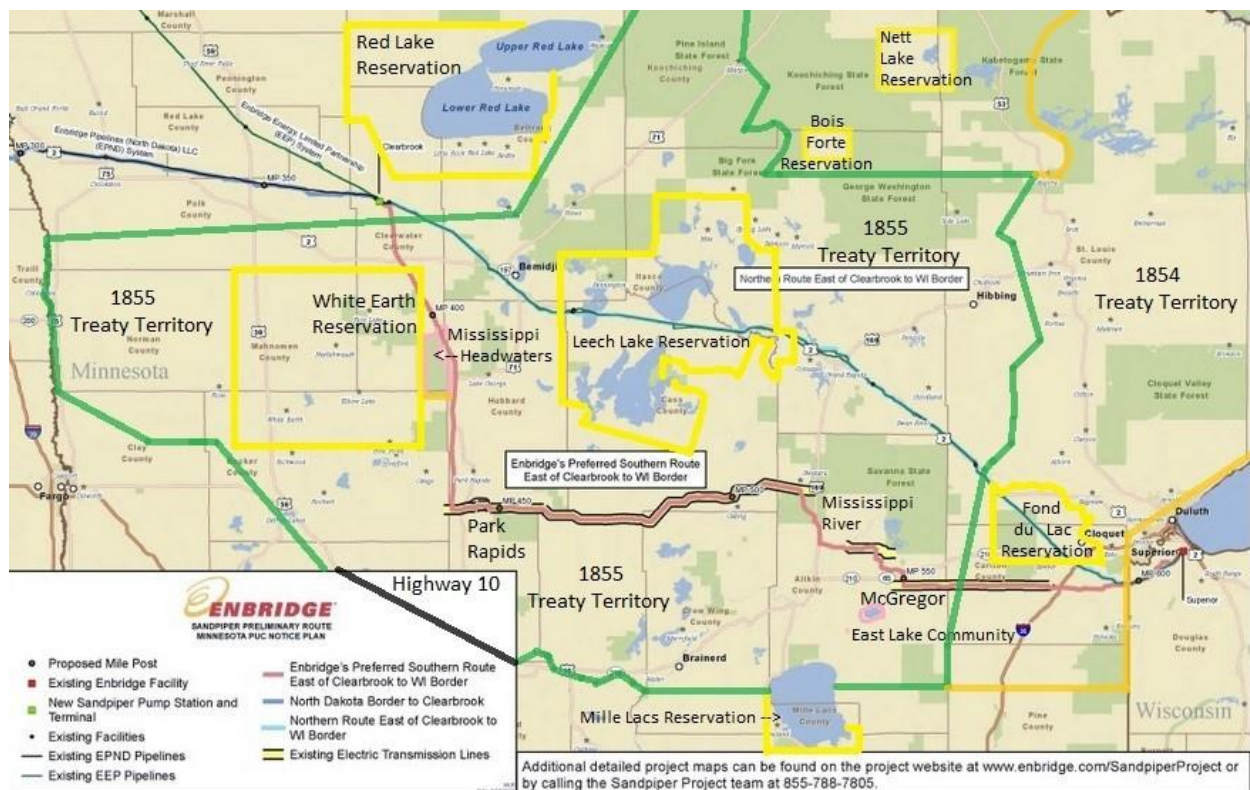
Presently, both the White Earth and Mille Lacs reservation tribal governments have initiated pipeline hearings with regard to Enbridge's Sandpiper and Line 3 proposed pipeline projects. Initial hearings for White Earth are

Honor the Earth, 13-473 Sandpiper
Motions for Stay and Consolidation for Sandpiper and Line 3 CNs.
May 20, 2015, p. 6.

scheduled for June 4, 2015 at 10:00 AM at the Rice Lake Community Center.

Initial hearings for the Mille Lacs reservation communities are scheduled for June 5, 2015 at 10:00 AM at the East Lake Community Center, south of McGregor.

Rumors are also circulating that Enbridge is attempting to set up a meeting between Minnesota and Wisconsin tribes at Black Bear Casino on Thursday, May 28, 2015 at 9:00 AM. Certainly for the Chippewa, the Sandpiper and Line 3 pipelines (abandonment and replacement) projects will only pass-through and forever pose long-term environmental and economic threats for federally protected treaty rights in northern Minnesota with no direct benefits.



Honor the Earth, 13-473 Sandpiper
Motions for Stay and Consolidation for Sandpiper and Line 3 CNs.
May 20, 2015, p. 7.

OBVIOUS QUESTIONS

1. So what would be the good reason for granting a CN permit when we can see in our lifetime already the spills and damages from the pipelines that already are old and according to Enbridge need replacement (with abandonment?)
2. What is the reason that both pipeline projects and potential for maximum barrels per day are not considered in an environmental impact statement or what 6-8 pipelines might do over the course of the next 50 years?
3. Is this not the very problem the applicant Enbridge or NDPC has with its present U.S. Highway 2 mainline corridor for Line 3 and the Enbridge solution seems to be new Line 3 pipe, in a new place with no direct benefits to Minnesota?

We need to consider adopting enlightened and more ethical principles like those announced at the *Science and Environmental Health Network* and the *Women's Congress for Future Generations*

We have entered the Age of Extreme Energy. Every region is facing threats -- from Virginia to Wisconsin, from Nebraska and Iowa to California. New destructive techniques -- for mining, drilling, processing, and transporting fossil fuels -- are swarming across the land like locusts.

Communities and the natural world are threatened

Corporations come in and pick off individual landowners and county boards with threats of eminent domain and false arguments about

national security. They bring unparalleled threats to our water, land, and climate from tar sands, fracking, mountain-top removal, and deep drilling beneath our coastal waters. After they get what they're after, the corporations move on, leaving behind a ruined landscape, toxic water and soil, communities worse off than before.

The old legal principles that permitted exploitation of land and people have failed us, failed to protect the necessities for life -- air, water, land, water, plants, animals, and public health. To protect our communities and the natural world, we can establish new legal principles.

To succeed in this effort, we must stand together. The work of protecting our communities is lonely when we believe we are the only ones facing a monumental threat. We must stand together because we have a new story to tell and new legal principles to guide us. We must stand together because the Earth is too precious to hand over to faceless corporations enriching their shareholders at the expense of future generations. This story can only be told with all our voices.

We stand together around these legal principles, which are essential to protect the land, water and health of our communities:

1) The common wealth is the basis of the economy.

The commons include water, air, wildlife, roads, parks, schools and other things that we share. The commons are what provide value to private property. Farms can't get their grain to market without public roads. Businesses (and their owners, employees and customers) can't function without clean air and water. We get hunting and fishing licenses to limit the taking of wildlife, so our common heritage can endure.

2) Government has a fiduciary and public trust duty to protect the commons for present and future generations.

The primary responsibility of government is to take care of the common wealth and health of its people. Government's responsibility is not to make private parties (such as corporations) rich. It is not to steal common assets from the people with one hand and sell them as

private property with the other.

Government's responsibility is to protect the common wealth for all its people. That is the central purpose of government. This duty is mandatory, not discretionary.

3) The precautionary principle is the best decision-making tool for governments to use to fulfill their public trust obligations to the commons.

Most environmental decisions are made balancing the costs and benefits of an activity to the economy. The economy gets the benefit of the doubt rather than people's health, clean drinking water and breathable air. The precautionary principle stands for the idea that we need to take action to prevent harm in the face of scientific uncertainty. Methods for implementing the principle include heeding early warnings, setting goals, identifying and choosing the best alternatives to harmful activities, reversing the burden of proof and the democratic engagement of affected stakeholders.

4) No eminent domain for private gain!

Eminent domain is the unique power of government to "take" private property (with just compensation) and move it into the commons to create a public good. Eminent domain must not be used to move private property from one private owner to another private owner. Nor should it privilege a private corporation that will destroy any part of the commons.

Using eminent domain to give private property (or public land) to a corporation is an abuse of power by government. A polluting pipeline that enriches its shareholders and damages the commons is not a public good.

5) Citizens have a right and a duty to withdraw consent from government actions that threaten the common wealth, communities or future generations.

The public trust responsibility of government empowers citizens as beneficiaries to hold the government accountable when they fail to protect the trust.

In a democracy, the legitimacy of government derives from the consent of the governed. If government does not have the consent of the people then we face either anarchy or dictatorship. Local communities have a right to give or withhold their consent from activities that threaten their future. New mechanisms for giving consent must be implemented. These mechanisms include referendums, ballot measures and town hall meetings.

The corollary to consent is that government processes and decisions must be open and transparent.

6) Polluter Must Pay

The public cannot be stuck paying the bill for spills or other damage to water, land or air. Accordingly, bonds and other mechanisms sufficient to clean up a worst-case accident must be in place before ever siting a well, a pipeline, a mine or a toxic waste facility. The bond must be in cash, not the stock of the company and not self-insurance.

7) Tribal nations have sovereignty to protect their land and water. All treaties must be honored. We stand with tribes who are defending their land, water, people and heritage.

8) Corporations are not people and have no inherent rights. They operate solely at the will of the people. The recent legal claim that corporations have the right of free speech, and the power to exercise eminent domain, has had disastrous consequences for communities and for future generations. The fiction that corporations are people must end. Anything that doesn't breathe isn't protected by the Bill of Rights.

Our Stand

We stand by these principles because they are pillars of justice. Without justice the rule of law is meaningless.

(See Some Legal Principles Regarding Pipelines, Fracking and Mining:

Defending our Communities and Future Generations, Science and Environmental Health Network and the Women's Congress for Future Generations 4/15.)

BIG PICTURE THINKING

No parts of this arrangement make any sense and we have other choices and applications presently before the Public Utilities Commission that accomplish essentially the same incremental transmission of oil per day. Let us not rush to a hasty decision that is certain to compound the present oil pipeline problems we have now. For these logical reasons *Honor the Earth* takes great exception the Report and verily believes that the certificate of need should be denied.

CONCLUSION

Based upon the reality of simultaneous, overlapping, concurrent pipeline projects and applications (mostly by Enbridge), files, records, exhibits and testimony provided by the Minnesota Department of Natural Resources and Pollution Control Agency, and for the foregoing reasons, *Honor the Earth* respectfully asks the PUC Commission to grant the motions for ***Stay*** of further Sandpiper PUC proceedings, and to establish a process ***Consolidate*** Sandpiper and Line 3 CN *stakeholder proceedings* for the judicial and public economy, fairness to the environment and its state and federal protection laws, respect for federally protected Chippewa property interests and treaty rights and recognition of the

current world prices for oil instead of the inflated pre-CN application perceptions of global supply, demand and value changes.

It should not take 20/20 hindsight later, or more litigation, to see now, that the present multiple DOC applications for oil pipelines, at least by the foreign corporation Enbridge (NDPC) deserves heightened, environmental scrutiny, of all related crude oil pipeline projects at the headwaters of the Mississippi and through and across the wild rice lakes and rivers, aquifers and wetlands.

Respectfully submitted May 20, 2015.

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Geographic Information System
(GIS) Mapping Analysis of
Potential Community
Vulnerabilities:

*The Proposed Sandpiper Pipeline in
Northern Minnesota*

Prepared for Honor the Earth

Technical Assistance Services for
Communities

February 2016

This Geographic Information System (GIS) analysis of potential community vulnerabilities from the proposed Sandpiper Pipeline was developed by Skeo Solutions, an independent consulting firm, for the Honor the Earth organization and their partners in northern Minnesota. Skeo was funded through the U.S. Environmental Protection Agency's (EPA's) Technical Assistance Services for Communities (TASC) program.

The contents do not necessarily reflect the policies, actions or positions of EPA. The report uses public information gathered from several sources. EPA disclaims any liability for any errors that may be contained in this document.

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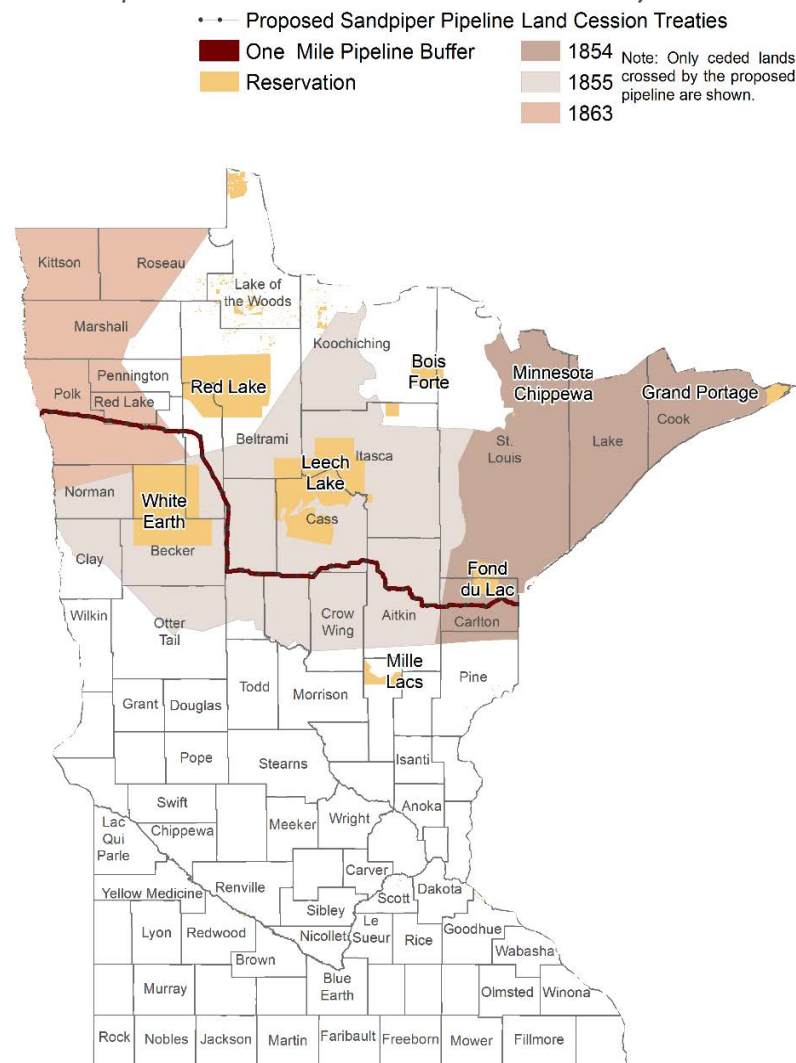
INTRODUCTION

Northern Minnesota is a sparsely populated, rural region with extensive natural and cultural resources. It has the highest acreage of tribal reservations and the densest cover of forests and wetlands in the state. A series of treaty agreements in the 1800s not only established tribal reservations, but also provided tribal communities with access to specific resources. For example, the 1837 and 1855 treaties provide “usufructuary right to hunt, fish, and gather the wild rice, upon the lands, the rivers and the lakes included in the territory ceded” outside of reservation boundaries. This means that Native American people have rights to utilize natural and cultural resources on lands outside of designated reservations shown in the map to the right, as long as the land is not substantially altered.¹

PROPOSED SANDPIPER PIPELINE

In November 2013, energy company Enbridge submitted a proposal to the Minnesota Public Utilities Commission and the North Dakota Public Service Commission to construct a 616-mile oil pipeline.² The preferred route for the Sandpiper pipeline would extend across the northern part of Minnesota. The Minnesota Public Utilities Commission approved the Certificate of Need initially, but Minnesota courts ruled that an Environmental Impact Statement is

Map 1. Minnesota Tribal Reservations and Treaty Lands



Data sources: Tribal lands ceded to the U.S., available at: <https://catalog.data.gov/dataset/tribal-lands-ceded-to-the-united-states>. Data date: 2015.

¹ The 1837 treaty was entered into with the Dakota and Ojibwe Tribes and the 1855 treaty with the Ojibwe Tribes. Ojibwe Tribes are also known as Chippewa and Anishinaabe. State of Minnesota v. Mille Lacs Band of Chippewa Indians. 1999. 526 U.S. 172, 175.

² Now a joint venture between Enbridge Energy Partners, L.P., and Marathon Petroleum Corporation.

now required to approve the Certificate of Need and a pipeline route.³ The proposed pipeline route would cover 302 miles in Minnesota and run between most of the state's tribal reservations, including through historic treaty areas. Crude oil pipelines account for 2,400 miles of pipeline in Minnesota as of 2015.⁴ Up to 225,000 barrels of crude oil would travel through the pipeline each day from Tioga, North Dakota, to Superior, Wisconsin. The pipeline would require about 120 feet of right-of-way land and excavation of 1.36 million cubic yards of soil. The pipeline would be buried 3 to 4 feet below ground level, roads or rivers and 4.5 feet under cultivated land.⁵ In comparison, the U.S. State Department's Final Supplemental Environmental Impact Statement for the Keystone XL pipeline calls for pipeline burial depths of 4 feet for most areas, 5 feet when crossing any body of water, and 3 to 4 feet when passing through large rock material.⁶

The proposed pipeline travels between the largest tribal reservations in Minnesota and is surrounded by treaty land (Map 1). Thus, while the pipeline avoids designated tribal reservations, the potential for impacts on tribal resources from the pipeline is potentially larger than might be expected if only tribal reservations were mapped.

PROJECT OVERVIEW

Honor the Earth requested a review of potential community vulnerabilities posed by the proposed pipeline for important tribal resources. Honor the Earth is a Native-led organization based in Minnesota, established by Winona LaDuke and Indigo Girls Amy Ray and Emily Saliers in 1993. Honor the Earth works to a) raise public awareness and b) raise and direct funds to grassroots Native environmental groups.

³ Dan Kraker. 2015. MN court: Oil pipeline needs environmental review before agency OK. MPR News. September 14, 2015. <http://www.mprnews.org/story/2015/09/14/sandpiper>.

⁴ Minnesota Environmental Quality Board. 2015. Interagency Report on Oil Pipelines. https://www.eqb.state.mn.us/sites/default/files/documents/Interagency%20Report%20on%20Oil%20Pipelines_DRAFTmarch.pdf.

⁵ North Dakota Pipeline Company. 2014. Before the Minnesota Public Utilities Commission, Docket No. PL-6668/PPL-13-474, revised January 31, 2014.

⁶ United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs. 2012. Final Supplemental Environmental Impact Statement: Appendix G Construction, Mitigation and Reclamation Plan. <http://keystonepipeline-xl.state.gov/documents/organization/221222.pdf>.

This summary provides a spatial analysis of community resources that are located in the path of the pipeline or next to it. As part of this review, Skeo conducted a spatial analysis of socio-economic indicators. One of the primary issues of concern for Honor the Earth was the potential impact of oil spills on the natural and cultural resources of the region. Community resources include:

- Wild rice lakes
- Traditional hunting areas
- Community and cultural areas of significance, such as gathering locations and burial mounds
- Sites of ecological and biological significance
- Drinking water and groundwater quality

Risks to resources could occur during the pipeline construction phase and the pipeline operation and maintenance phase. A 2015 interagency report from the Minnesota Environmental Quality Board states that pipeline construction risks could include habitat fragmentation, sediment input to lakes and rivers, compaction of soil, and disturbance to activities in or adjacent to the pipeline path and staging area. The report notes that farms could also be impacted by soil compaction and loss of soil quality and organic farms could lose certification if any fluids or spills occurred on certified land.⁷ The center of the proposed pipeline route as well as a one-mile buffer on each side (combined two-mile buffer) are shown on all maps in this report. Operation and maintenance risks could include pipeline spills, which is why the buffer area was added. For example, in the case of a pipeline break, spilled oil could move from the direct pipeline route into surrounding streams and lakes and potentially downstream, impacting other resources. The Minnesota Department of Commerce also used a two-mile buffer when assessing the potential environmental effects of the proposed pipeline.⁸

In addition, this summary used historical occurrence of spill data to inform the potential for spilled oil migration beyond the pipeline. From 1995 to 2014, more than 40 million gallons of oil have spilled from 1,100 inland pipelines across all energy companies in the U.S., though very

⁷ Minnesota Environmental Quality Board. 2015. Interagency report on oil pipelines.

https://www.eqb.state.mn.us/sites/default/files/documents/Interagency%20Report%20on%20Oil%20Pipelines_DRAFTmarch.pdf.

⁸ Minnesota Department of Commerce. 2014. Sandpiper Pipeline: Comparison of Environmental Effects of Reasonable Alternatives.

http://mn.gov/commerce/energyfacilities/documents/33599/Environmental%20Review%20of%20System%20Alternatives%20MASTER%2020141218_Final.pdf.

few spills were in Minnesota.⁹ From 2009 to 2013, Enbridge pipelines have spilled at least 2.5 million gallons from 490 oil spills.¹⁰ In 2010, for example, Enbridge line 6B, located in Michigan, ruptured spilling more than 1 million gallons of diluted bitumen crude oil into the Kalamazoo River. The oil travelled 35 miles downstream in the Kalamazoo River. The cleanup lasted until 2013. The cost to EPA exceeded \$50 million. Over 160,000 gallons of oil that could not be recovered remain in the bottom of river.¹¹ The Sandpiper pipeline would transport light crude oil, which traditionally floats on water and may not be as difficult to clean up as the bitumen crude oil.

POTENTIAL WILD RICE LAKE VULNERABILITIES

Wild rice¹², also known as Manoomin, primarily grows wild in the Great Lakes region, and is only harvested for food in Minnesota and Canada.¹³ It is essential to Tribal life because of its rich nutritional value for subsistence, support of tribal economies, and for its importance culturally and spiritually.¹⁴ A number of federal treaties in the region specifically reserved wild rice lakes for use by Tribal people, including the creation and support for wild rice camps, still in use today.¹⁵ Wild rice lakes are considered sacred landscapes. The White Earth reservation has designated Lower Rice Lake as a Traditional Cultural Property.¹⁶ Many lakes have been lost to habitat fragmentation from dams, recreation, mining and development. Those that remain provide important economic resources to the Tribal community, including \$1 million in annual revenue from Lower Rice Lake and \$500,000 in revenues from rice lakes in the East Lake community. If an oil spill travelled downstream into wild rice lakes from the proposed pipeline, it could potentially impact the cultural and economic value of the wild rice lakes along the proposed pipeline.

⁹ Pipeline and Hazardous Materials Safety Administration. <https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?Portalpages>.

¹⁰ Enbridge. 2013. Environmental Performance of Spills, Leaks and Releases. <http://www.enbridge.com/~media/CSR/PDFs/datasheets/Environmental-Performance-Spills-Leaks-and-Releases.pdf?la=en>.

¹¹ EPA Office of Inspector General. 2015. Limited Oil Spill Funding Since the Enbridge Spill Has Delayed Abandoned Oil Well Cleanups; Emergency Oil Responses Not Impacted. http://www2.epa.gov/sites/production/files/2015-09/documents/20130904-13-p-0370_glance.pdf.

¹² A wild aquatic grass, *Zizania aquatica* and Minnesota's state grain.

¹³ Wild rice is not native to California, but is cultivated in the state.

¹⁴ Lauren Wilcox. "Going with the Grain." Smithsonian.com. September 2007. <http://www.smithsonianmag.com/heritage/going-with-the-grain-161650307/?no-ist>.

¹⁵ Federal Legislation. 1937. Wild Rice Campsites: Section 5 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) funding authority Act of May 9, 1938 (52 Stat. 300) and Act of August 9, 1937 (50 Stat. 573).

¹⁶ A Traditional Cultural Property (TCP) is a property that is eligible for inclusion in the National Register of Historic Places (NRHP) based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts or social institutions of a living community.

This table lists the acreage of wild rice lakes within the proposed pipeline buffer. More than 1,200 lakes and rivers in 54 counties in Minnesota contain wild rice, with the largest concentrations in the north-central counties of Aitkin, Cass, Crow Wing, Itasca and St. Louis. Wild rice lakes in Aitkin, Becker, Cass, Clearwater, Crow Wing and Hubbard – counties crossed by the proposed pipeline – supported 54 percent of wild rice harvesting trips by licensed wild rice harvesters in 2006.¹⁸

Maps 2 and 3 on the next pages show wild rice lakes located near the proposed Sandpiper pipeline route. They also show downstream watersheds and water flow direction, indicating areas potentially vulnerable to potential downstream migration if a spill or other accident occurred. Portage Lake (Panel 1 on Map 2), Island Lake (Panel 1 on Map 2), Third Guide Lake (Panel 3 on Map 2), and Peterson Lake (Panel 3 on Map 2) would be crossed by the proposed pipeline and as at the greatest potential risk from construction

Acreage of Wild Rice Lakes Inside of Two-mile Wide Proposed Sandpiper Pipeline Buffer.

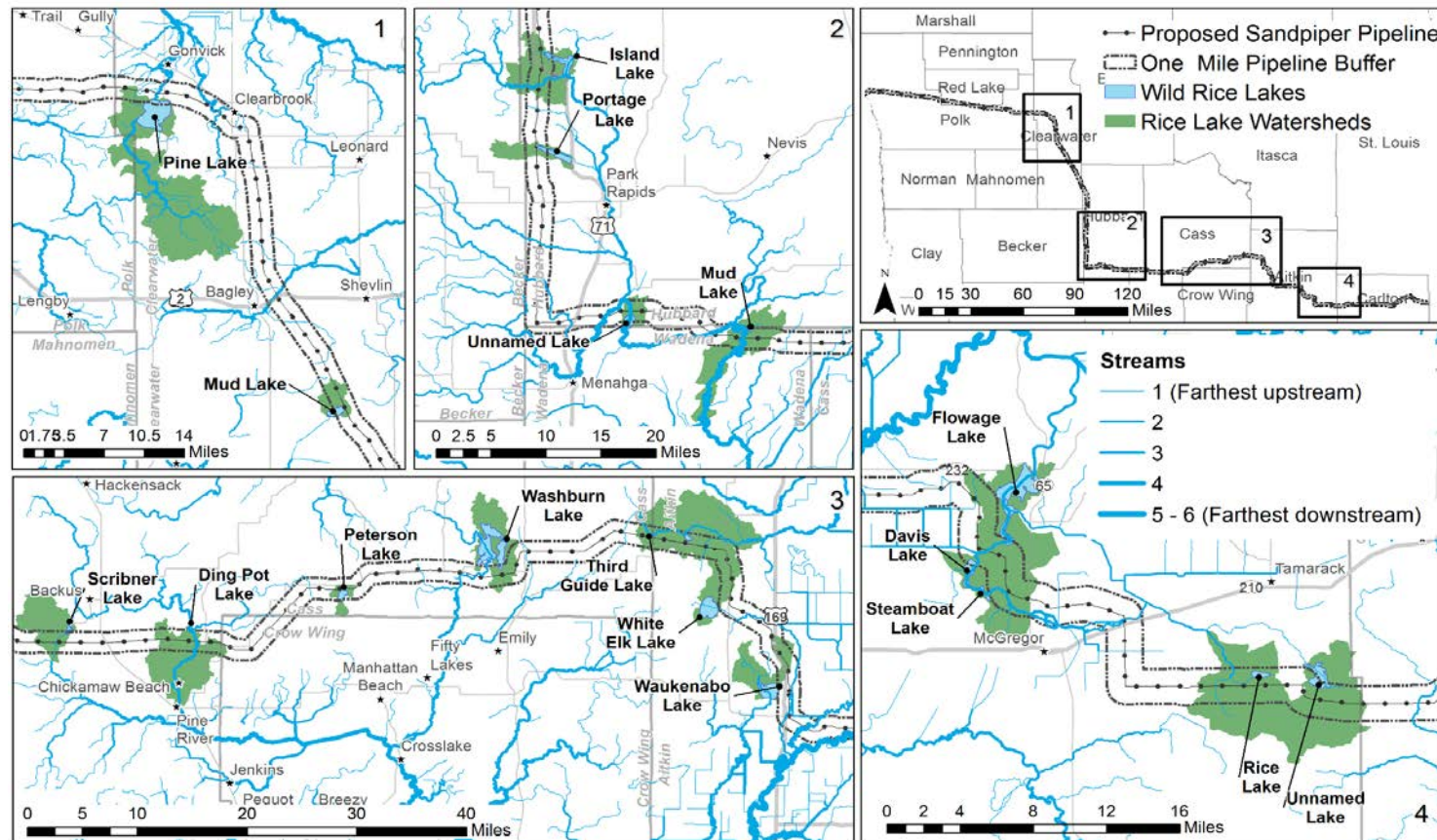
Lake Name	Acres in Buffer	Lake Name	Acres in Buffer
Waukenabo Lake	82	Rice Lake	165
Davis Lake	85	Scribner Lake	49
White Elk Lake	13	Peterson Lake	386
Steamboat Lake	5	Third Guide Lake	85
Portage Lake	223	Mud Lake	379
Flowage Lake	59	Ding Pot Lake	41
McKinney Lake	152	Unnamed Lake	127
Mud Lake	76	Unnamed (Salo)Lake	278
Unnamed (Twin Basin) Lake	295	Washburn Lake	109
Island Lake	174	Pine Lake	353
Total: 3,136 acres¹⁷			

¹⁷ Based on 2006 Minnesota Department of Natural Resources (DNR) Wild Rice Harvesters Survey (Norrgard, R., Drotts, G., Drewes, A., and Dietz, N. 2007. Minnesota Natural Wild Rice Harvester Survey: A Study of Harvesters- Activities and Opinions. Management Section of Wildlife, Division of Fish and Wildlife, Minnesota Department of Natural Resources, St. Paul, MN. 139 pp.). Updates include data from Great Lakes Indian Fish and Wildlife Commission, Fond Du Lac Indian Reservation, Mille Lacs Indian Reservation, Leech Lake Indian Reservation, and White Earth Indian Reservation and from fisheries lake surveys and aquatic plant surveys. <https://gisdata.mn.gov/dataset/env-wild-rice-lakes-rivers-wld>.

¹⁸ Minnesota Department of Natural Resources. 2007. Minnesota Natural Wild Rice Harvester Survey: A Study of Harvesters' Activities and Opinions. <http://1854treatyauthority.org/cms/files/REP%20WR%20Harvester%20Survey.pdf>.

impacts and potential spills. During a spill, oil would need to travel 12 to 15 miles downstream from the pipeline to reach Lower Rice Lake, the state's only certified organic wild rice lake. Depending on the amount of rainfall at the time and the amount of water flowing in streams and rivers, oil could potentially reach the lake. *Reconsideration of the pipeline route and/or additional mitigation strategies could be provided where the pipeline crosses or is connected via streams to wild rice lakes.*

Map 2. Wild Rice Lakes and Watersheds

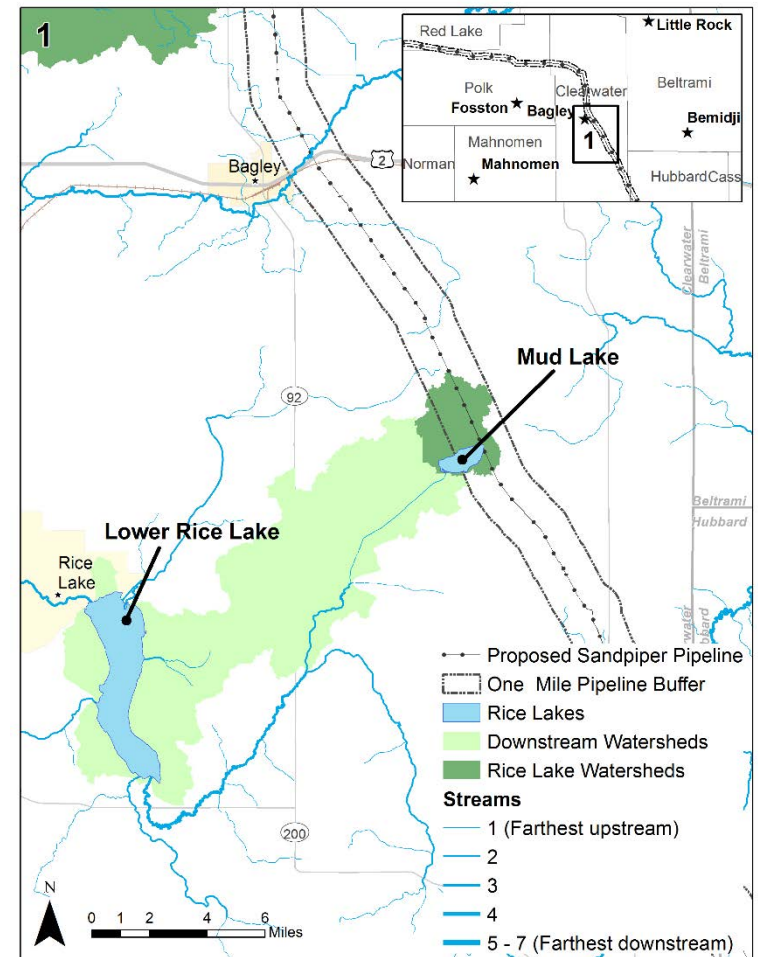


Data sources: Rice lake watersheds identified by Minnesota Department of Natural Resources (DNR) from aerial photos and field surveys, available at <https://gisdata.mn.gov/dataset/biota-wild-rice-lakes-dnr-wld>. Data date: 2009. Minnesota DNR catchments (watersheds) are the highest resolution data available, using 30 data sources, available at http://deli.dnr.state.mn.us/metadata/wshd_lev08py3.html. Data date: 2009. NHDPlus stream data from U.S. Geological Survey. Stream order data added to show downstream progression. Available at <http://www.horizon-systems.com/nhdplus>. Data



Wild rice lake. ©iStock.com/RozHawley– Not For Reuse

Map 3. Lower Rice Lake



Lower Rice Lake in relation to the proposed pipeline route and area watersheds. Lower Rice Lake is the only certified organic rice lake in Minnesota. Data sources same as in Map 2.

POTENTIAL TRADITIONAL HUNTING RESOURCE VULNERABILITIES

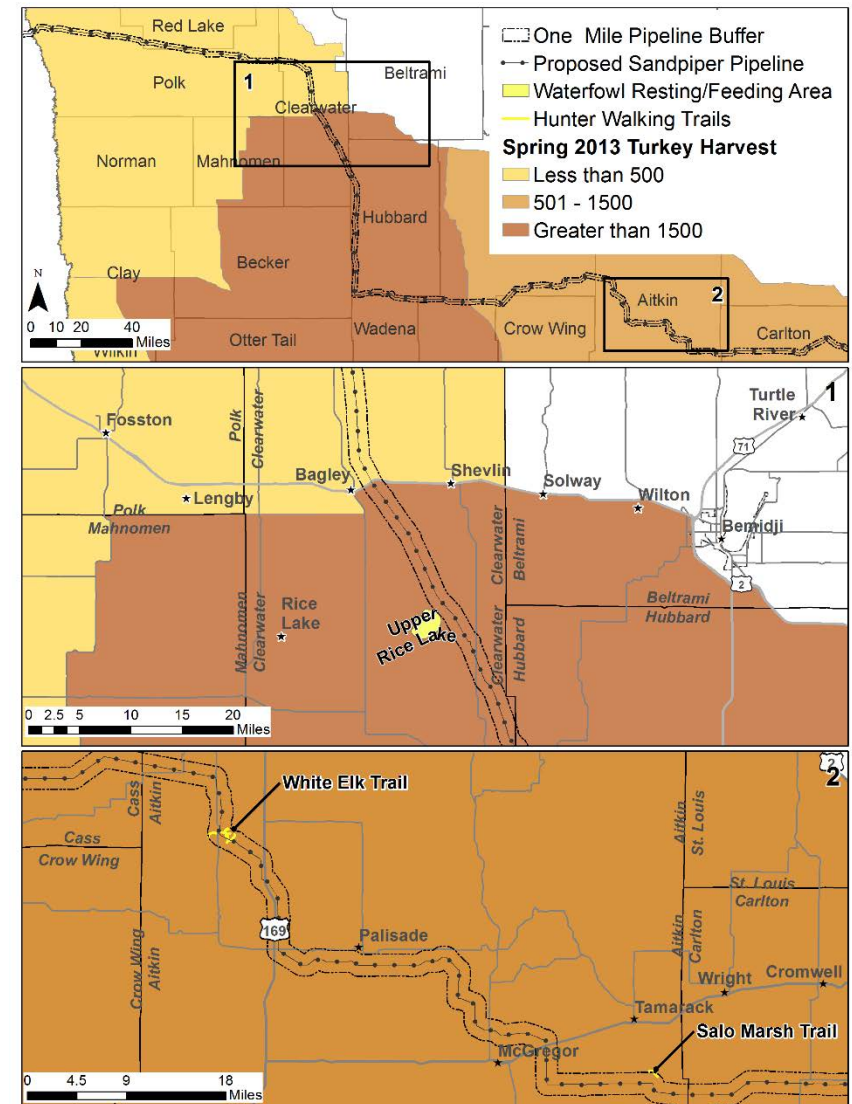
The proposed pipeline route cuts through the second and fourth most productive regions for wild turkey hunting in Minnesota. The pipeline would cut through one state designated hunter trail and the buffer would pass alongside another hunter trail and a lake important for waterfowl habitat (Map 4).

Turkey harvest: The top panel shows a snapshot of turkey harvests. Cass, Clearwater, Hubbard and Wadena counties had the second highest turkey harvest in the state in 2013; 8,107 hunters harvested 2,628 turkeys. To the west, the medium-brown region provided 3,868 hunters with 1,170 turkeys, the fourth highest total in the state. Temporary pipeline construction disturbances and any habitat loss might be the most substantial concerns from the proposed pipeline. *Construction during the spring could have the largest direct impacts on harvest because spring turkey harvest tends to be greater than fall harvest. Seasonal restrictions on construction could be beneficial.*

Waterfowl habitat: Though wild rice lakes provide habitat for waterfowl, many of these have not been designated as such by the State of Minnesota. A single lake – Upper Rice Lake – along the pipeline buffer is recognized as

Data Sources: Minnesota DNR Spring 2013 turkey harvest and 2005 migratory waterfowl resting and feeding areas, and hunter walking trails, available at <https://gisdata.mn.gov/dataset/bdry-turkey-permit-areas>, <https://gisdata.mn.gov/dataset/env-migratory-waterfowl-areas>, and <http://www.dnr.state.mn.us/hunting/hwt/index.html>.

Map 4. Traditional Hunting Resources



primary waterfowl habitat. There could be additional lakes along the route that provide waterfowl habitat. However, they were not included as part of this analysis.

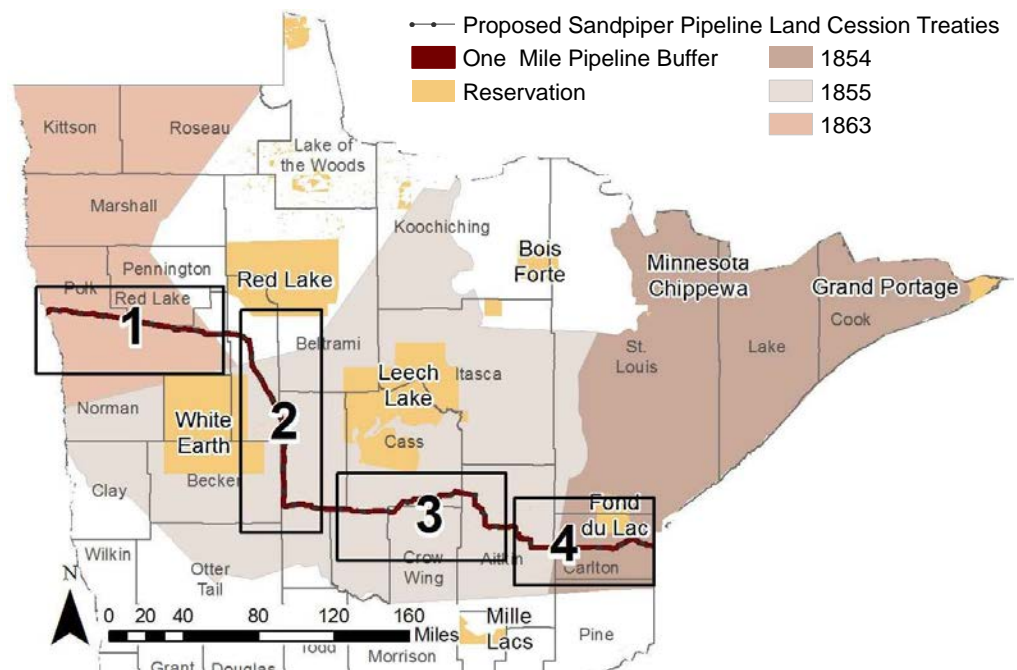
Hunter trails: The bottom panel shows known hunter trails. A designated state hunter walking trail – White Elk Trail – cuts across the proposed pipeline route and the Salo Marsh Trail is at the edge of the pipeline buffer. The pipeline thus appears to eliminate the White Elk Trail’s connectivity. *Community members could suggest a new path or other options to address this impact.*

SITES OF SPECIFIC TRIBAL INTEREST

Honor the Earth and their partners conducted an evaluation of sites of specific tribal interest along the proposed pipeline. Honor the Earth selected 180 sites that serve as important cultural and archaeological resources through this process. These resources include locations of burial mounds, cemeteries, sacred sites, medicinal plant and berry harvesting areas, drinking water wells/springs and areas that are part of a spiritual or sacred landscape. Additional information regarding the specific importance and details of each site is available through a more in-depth assessment by the White Earth Tribal Government, which holds the documentation on each site.

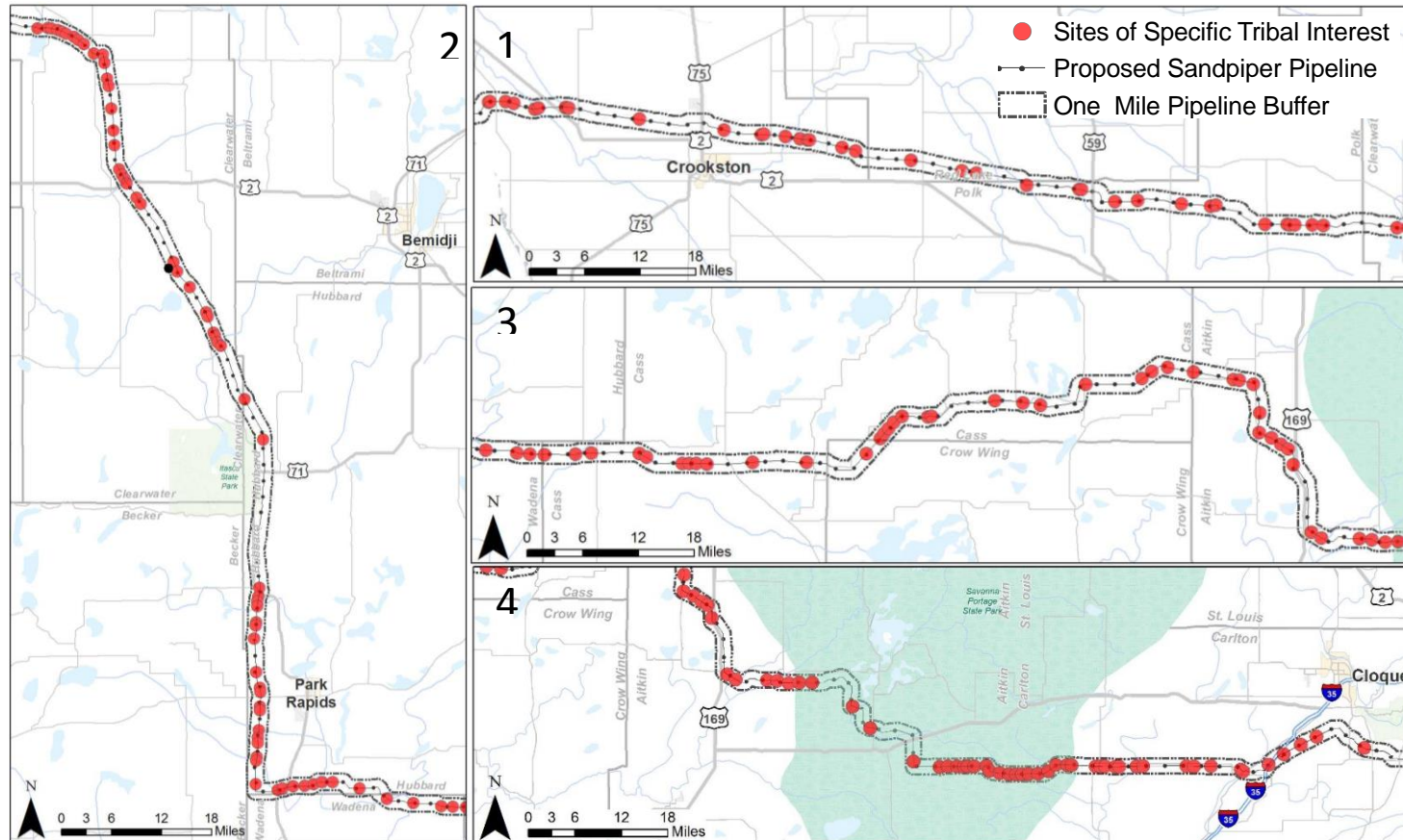
One important point to note is that only sites that would intersect the proposed Sandpiper pipeline are shown, based on the route information available as of January 2016. If the route of the pipeline were to change, Honor the Earth and its partners would serve as a source of information on additional sites of tribal interest. *Due to the extensive coverage of the*

Map 5. Sites of Specific Tribal Interest: Index Map.



sites along the proposed pipeline, we recommend Enbridge reach out to the White Earth Tribal Government early on in the process and that Enbridge contact the White Earth Tribal Government for additional information if they do not find evidence of cultural resources at the sites identified in Maps 5 and 6.¹⁹

Map 6. Sites of Specific Tribal Interest



¹⁹ This information is proprietary and is property of the White Earth Tribal Government. Access to this information would require agreeing to a protocol with the White Earth tribal Government. Any effort to identify that these sites are not one or more of the following: cultural, archaeological, religious, ceremonial, sacred, gathering areas, spiritual landscape and/or

OTHER POTENTIALLY VULNERABLE ECOSYSTEMS AND SPECIES

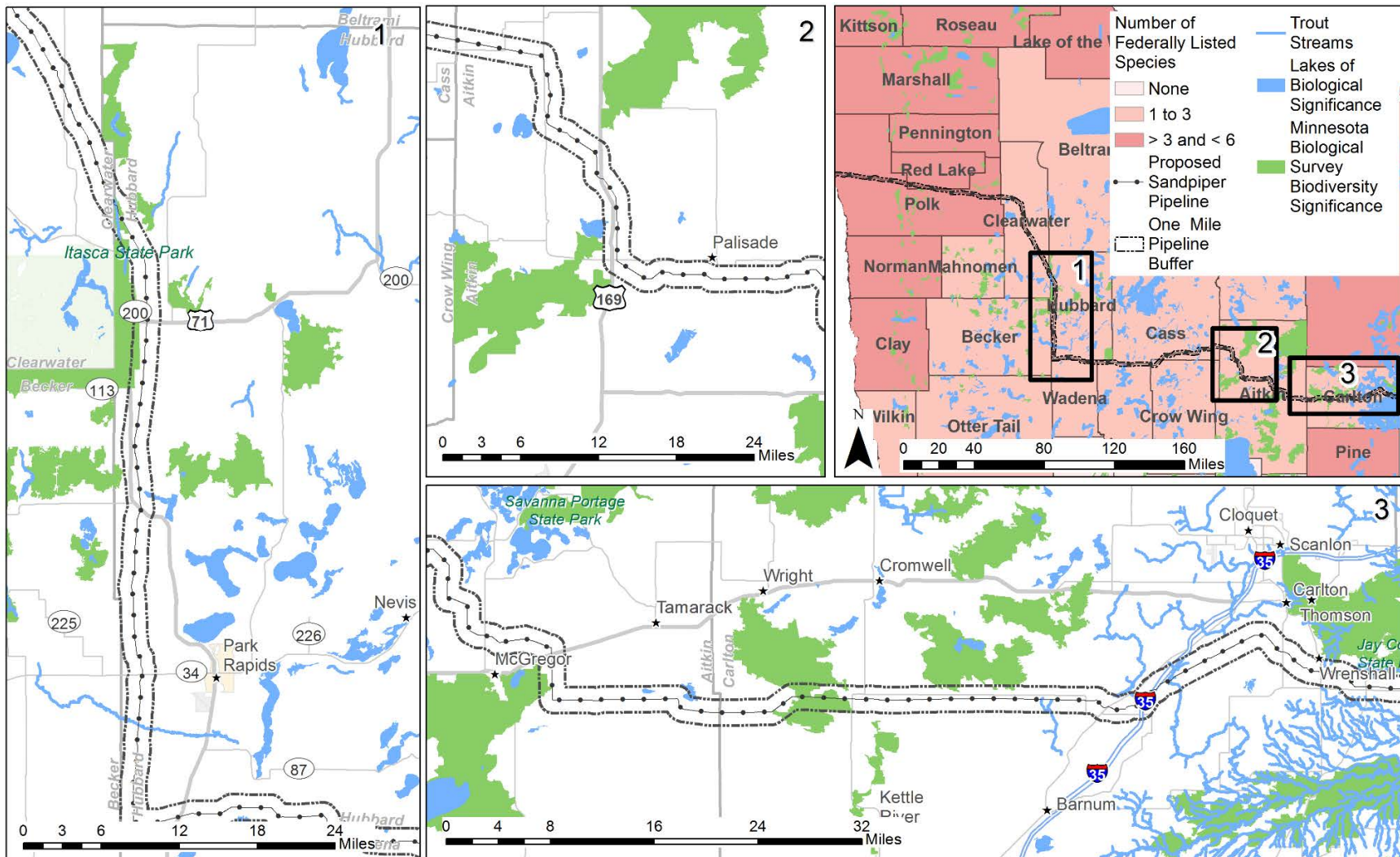
The Minnesota Biological Survey (MBS) ranks lands of ecological significance based on the number of rare species, the quality of native plant communities, site size and context within the landscape. For aquatic ecosystems, the State of Minnesota has ranked lakes in a similar manner. Combined with data on trout streams, these three data sources provide details on sensitive ecosystems and species on land and in the water (Map 7). Construction in or near these areas or spills could have a larger impact on sensitive species than similar impacts outside of these areas, shown in white on the map on the following page (Map 7). Additionally, species that are federally listed as threatened or endangered are especially sensitive to changes in habitat. The area along the proposed pipeline route with the greatest number of endangered species is located in Polk County. *Consideration of pipeline route and/or additional mitigation strategies could be provided where the pipeline crosses these sensitive habitats.*

Ecologically Sensitive Sites Directly in the Path or in the Two-mile Buffer of Proposed Pipeline Route.

Site Type	Within Proposed Pipeline Buffer	Within Buffer and Proposed Pipeline Path
Trout streams	South Fork Pine River, Spring Brook, Moose Horn River, Silver Creek Tributary, Red River, Clear Creek Tributaries	La Salle Creek, Straight River, King Creek, Black Hoof River
High and outstanding biologically significant lakes	Pine Lake, Mud Lake, Island Lake, Upper Twin Lake, Round Lake, Washburn Lake, Roosevelt Lake, White Elk Lake, Waukenabo Lake, Rice Lake, Salo Wildlife Management Area Impoundment	
High and outstanding MBS biodiversity sites	Pleasant Lake, Itasca State Park, Little Willow River, McGregor Marsh, Kettle Lake Peatlands	La Salle Creek, Lakeview 27/Automba 1

significant sites should be presented to the White Earth Tribal Government, including all research and field notes related to the site. A review will be conducted to verify the information. This could be done before any construction is started.

Map 7. Biologically Important Habitat

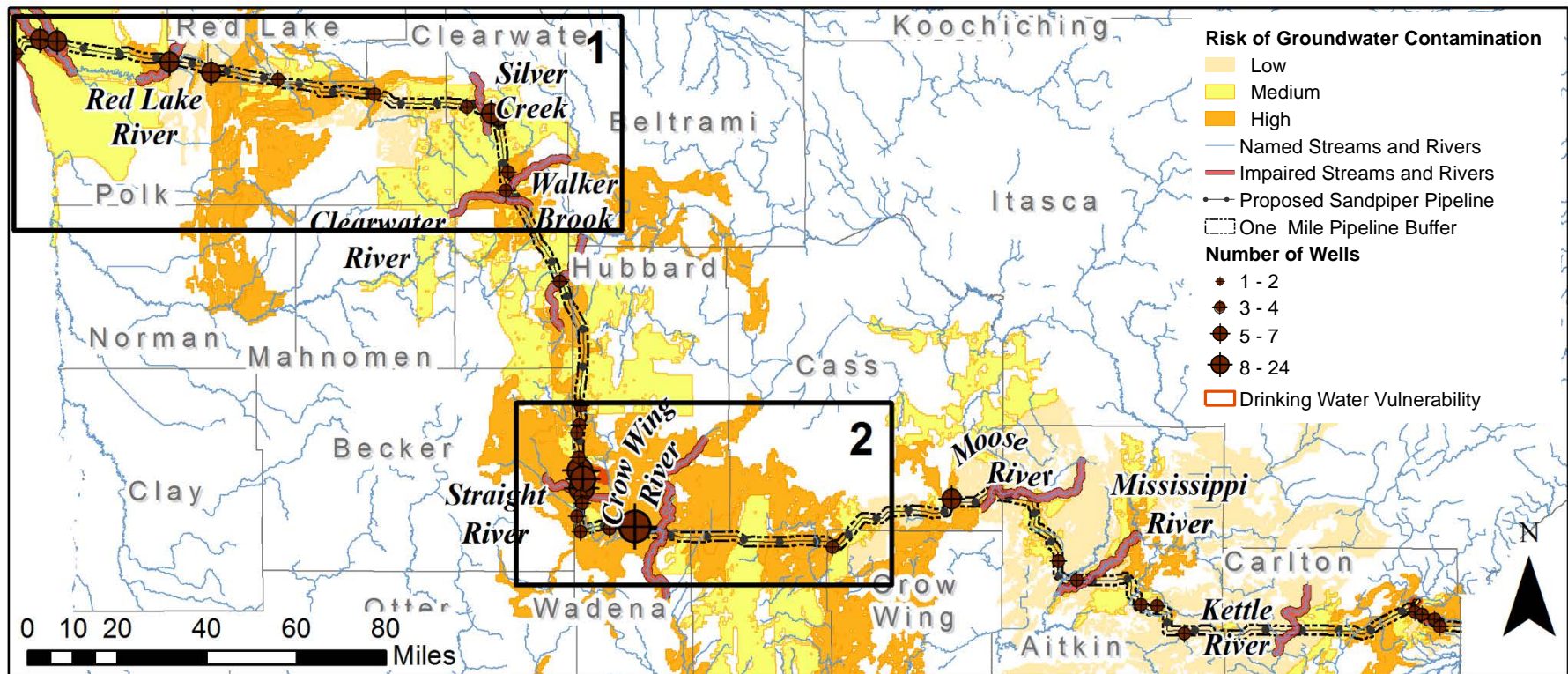


Data Sources: Species that are federally listed as endangered or threatened. Obtained at the county level from the U.S. Fish and Wildlife Service, available at <http://www.fws.gov/midwest/endangered/lists/minnesot-cty.html>. Data date: 2015. "High" and "Outstanding" value sites selected from the Minnesota Biological Survey Biodiversity sites, available at <https://gisdata.mn.gov/dataset/biota-mcbs-sites-of-biodiversity> and DNR's Lakes of Biological Significance, available at <https://gisdata.state.mn.us/dataset/env-lakes-of-biological-signific>. Data date: 2015. State-designated trout streams, available at <https://gisdata.state.mn.us/dataset/env-trout-stream-designations>. Data date: 2015.

POTENTIAL DRINKING WATER AND GROUNDWATER VULNERABILITIES

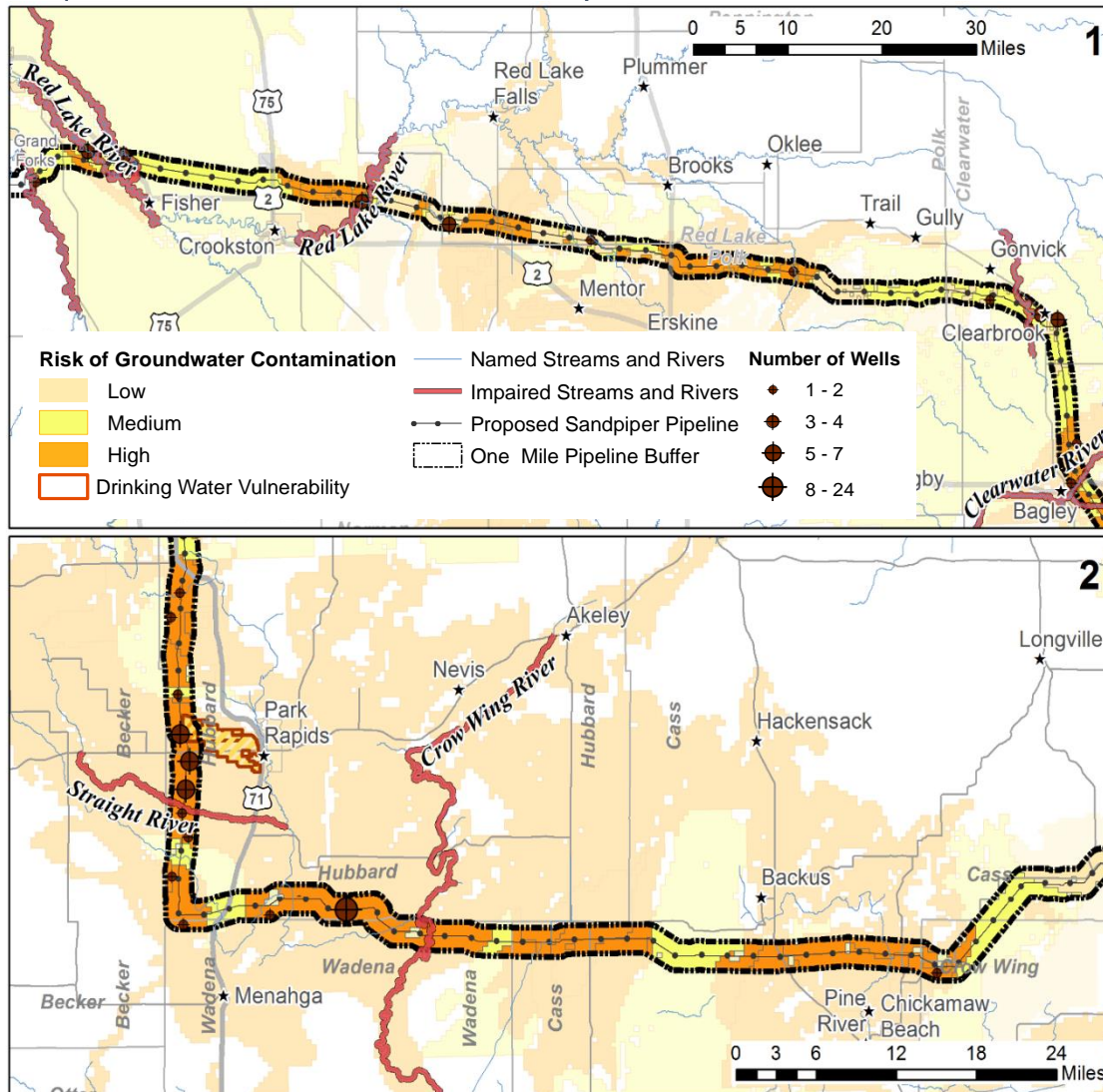
This section focuses on potential drinking water and groundwater contamination vulnerabilities and existing pollution burdens in streams or rivers in identified regions. The following maps (Maps 8 and 9) show areas along the proposed pipeline route that could be vulnerable to groundwater contamination during pipeline construction or due to spills. While the locations of drinking water wells for public water supplies are not publicly

Map 8. Groundwater Contamination Vulnerability



Data Sources: Risk of groundwater contamination takes into account soils and geology, available at http://www.dnr.state.mn.us/waters/groundwater_section/mapping/gwcontam_susceptibility.html. Data date: 1989. Impaired streams for all chemicals, available at <https://gisdata.mn.gov/dataset/env-impaired-streams-2012>. County well data, which excludes public drinking water supplies, available at <http://www.mngeo.state.mn.us/chouse/metadata/wells.html>. Data date: 2011. Drinking water vulnerability areas showing chance of chemical contaminating local supplies, available at <http://www.mngeo.state.mn.us/chouse/metadata/wells.html>. Data date: 2014.

Map 9. Groundwater Contamination Vulnerability



available, irrigation wells and high-risk groundwater vulnerability areas are shown. Areas where the risk of groundwater contamination is high mean that chemicals could reach groundwater faster than in areas where the risk of contamination is low.

Private groundwater wells: Groundwater is the primary source of water for people in Minnesota, providing 95 percent of residents on private wells with drinking water.²⁰ Map 9 shows the locations of private irrigation wells. Maps 9(1) and 9(2) take a closer look at the boxes shown on Map 8. Residents of Minnesota can locate their wells online, though the data are not available for download, and many older wells are not mapped.²¹ Residents with shallow, older wells are more likely be at risk from contamination. For instance, a University of Minnesota study found that wells less than 50 feet deep or more than 40 years old are more likely to be contaminated with nitrates or bacteria.²²

In general, private wells might be more at risk from contamination should a spill occur since they are not regulated by EPA and are not often inspected once installed. Shallow wells are more likely to be affected by a surface or shallow spill, and older wells are likely to be corroded, making it easier for contaminated water to move

²⁰ J.B. Anderson, F. Liukkonen and F. Bergsrud. Safe Drinking Water for Minnesotans. <http://www.extension.umn.edu/environment/water/safe-drinking-water-for-minnesotans/>.

²¹ Minnesota Well Index. <https://apps.health.state.mn.us/cwi/>.

²² J.B. Anderson, F. Liukkonen and F. Bergsrud. Safe Drinking Water for Minnesotans. <http://www.extension.umn.edu/environment/water/safe-drinking-water-for-minnesotans/>.

into them. Sandpoint wells, commonly used in Minnesota, may be at higher risk. While a GIS database for these wells, which range from 15 to 30 feet deep, is not available, owners must report their installation to the Minnesota Department of Health.²³ The Sandpiper pipeline is expected to be placed 36 to 54 inches below ground; a pipeline rupture could potentially affect these shallow wells. *The community could encourage Enbridge or the State of Minnesota to take the risk of contamination at higher-risk groundwater wells into consideration.*

Acres and Length of Proposed Pipeline through Aquifers at High Risk of Contamination.

County	Acres within Two-mile Buffer	Linear Miles along Proposed Pipeline Route
Aitkin	2,361	0.8
Becker	39	0.0
Carlton	21,254	16.5
Cass	92,877	31.3
Clearwater	33,459	19.7
Crow Wing	67,979	4.1
Hubbard	88,232	48.4
Polk	37,210	28.5
Red Lake	10,765	7.9
Wadena	67,234	7.7
Totals:	421,407	164.9

Regional groundwater contamination vulnerability: This table lists the land acreage in the pipeline buffer area by county, as well as the length of pipeline that would be located directly over land where contaminants would have the greatest chance of contaminating groundwater. The proposed pipeline route could impact several aquifers along the pipeline, particularly in Hubbard, Wadena and Cass counties, where sand-plain aquifers produce large amounts of water but are easily contaminated. In Polk and Red Lake counties, recharge areas in local beach ridges are vulnerable to contamination and pumping in this region could bring poor quality water to shallow aquifers. In Carlton County, there are limited groundwater resources and water quality challenges from area land uses and mine pits. In Hubbard, Wadena, Cass and Crow Wing counties, sand-plain aquifers yield a large amount of water but are highly vulnerable to groundwater contamination. In Aitkin and Clearwater counties, shallow aquifers with numerous connections to wetlands could be vulnerable to chemical spills on land as well as spills from buried pipelines. *Consideration could be given to implementing stronger protective measures in regions where drinking water is scarce and aquifers are highly vulnerable.*

Public drinking water supply vulnerability: Panel 2 of Map 9 on the previous page shows the overlap between the pipeline buffer area and drinking water vulnerability for cities located along the proposed pipeline route. Park Rapids is the largest city with potential drinking water vulnerability.

Drinking water supply areas in Wrenshall, Park Rapids and Carlton may be at risk for contamination. The risk of chemicals travelling from land into

²³ J.B. Anderson, F. Liukkonen and F. Bergsrud. Safe Drinking Water for Minnesotans. <http://www.extension.umn.edu/environment/water/safe-drinking-water-for-minnesotans/>

drinking aquifers below is highest at Park Rapids and moderate in Wrenshall and Carlton. Drinking water supply management area (DWSMA) vulnerability is an assessment of the likelihood for a potential contaminant source within a drinking water supply management area to contaminate a public water supply well. The assessment is based on the aquifer's geologic sensitivity and the chemical and isotopic composition of the groundwater.²⁴ *Consideration could be given to the role of drinking water source areas and their protection along the proposed pipeline.*

Existing water pollution burdens: Impaired streams and rivers are waterways already burdened by pollution. Streams are designated as impaired by the EPA or state when water quality is so poor that measures are needed to restrict additional pollutants. Pollution from these waterways could affect groundwater quality where the waterways connect to aquifers and where they impact alternative sources of drinking water. There are 10 impaired streams and rivers, including the headwaters of the Mississippi River, located along the proposed pipeline route.

Impaired Stream and Rivers along the Proposed Sandpiper Pipeline Route and Buffer.

River	Reason Impaired	High Risk of Groundwater Contamination	Watershed
Red Lake River	mercury in fish	partial	Red Lake River of the North
Grand Marais Creek	low pH; low oxygen	no	Red Lake River of the North
Silver Creek	fecal coliform	no	Red Lake River of the North
Clearwater River	mercury in fish; low oxygen	yes	Red Lake River of the North
Walker Brook	low oxygen	yes	Red Lake River of the North
Mississippi River	low oxygen; mercury in fish	partial	Upper Mississippi River
Straight River	low oxygen	yes	Upper Mississippi River
Crow Wing River	mercury in fish	yes	Upper Mississippi River
Moose River	low oxygen	no	Upper Mississippi River
Kettle River	mercury in fish	no	St. Croix River

²⁴ Minnesota Department of Health. 2014. Drinking water supply management area vulnerability. <http://www.health.state.mn.us/divs/eh/water/swp/maps/gis/dwsvul.html>.

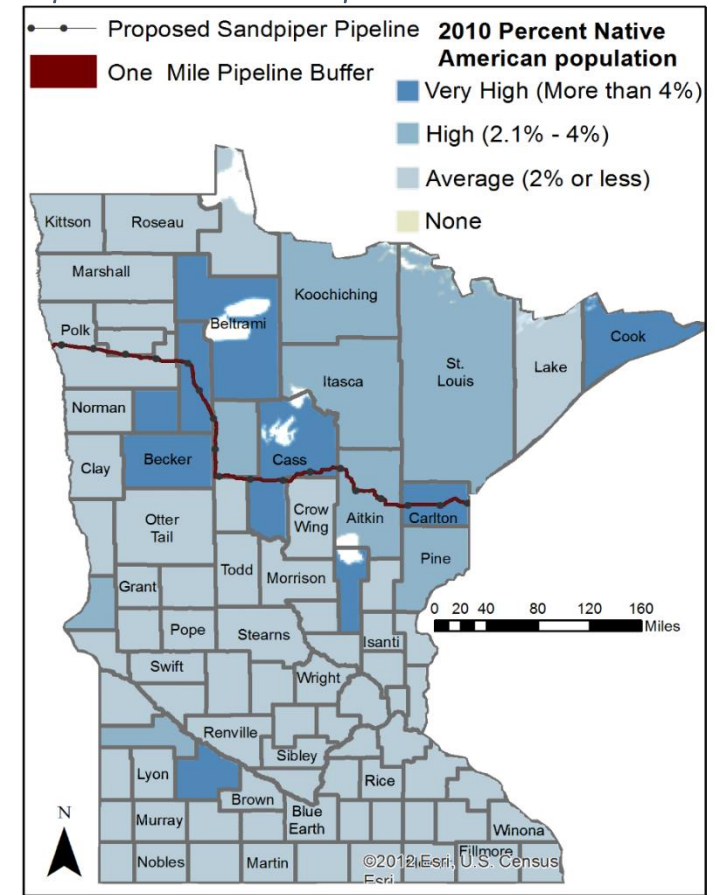
ADDITIONAL CONSIDERATIONS: SOCIO-ECONOMIC INDICATORS

Studies have shown that communities with fewer resources are more likely to have polluting facilities near their homes and fewer enforcement staff to help identify and address pollution violations.²⁵ EJSCREEN is a publicly-available environmental justice mapping and screening tool created by EPA that combines environmental and demographic indicators. EJSCREEN data indicate that the community along the pipeline is not exposed to high levels of pollution. This finding suggests that, while the community is not burdened with high pollutant levels, any spills could have substantial impacts on natural resources, such as wild rice lakes and other sites of tribal interest, and could alter this finding.

This summary presents an analysis of four indicators of social vulnerability: diversity (Native American population as a percent of total state population), high school dropout rate, unemployment rate and the number of people older than 64.

Map 10 shows the percentage of Minnesota's population, by county, that identifies as Native American. The majority of Native Americans within Minnesota live in the counties along the proposed pipeline route, making this group especially vulnerable to potential pipeline impacts. The U.S. State Department's environmental justice analysis of the Keystone XL pipeline states that "impacts during construction could include exposure to construction dust and noise, disruption to traffic patterns, and increased competition for medical or health services."²⁶ Like the Sandpiper pipeline, the Keystone XL pipeline would travel through areas with higher than average percentages of Native American populations and could have a larger impact on Native American communities because of this. In Minnesota, 18 percent of Native American people do not have

Map 10. Native American Population



Data Sources: Percent Native American population, available at <http://census.gov>. Data date: 2010.

²⁵ M. Lavelle and M. Coyle. 1992. Unequal Protection: The Racial Divide in Environmental Law. The National Law Journal; D. Konisky, David and T. Schario. 2010. Examining Environmental Justice in Facility-Level Regulatory Enforcement. Social Science Quarterly. Pp. 835-855; D. Konisky, David. 2009. Inequities in Enforcement? Environmental Justice and Government Performance. Journal of Policy Analysis and Management. Pp. 102-111.

²⁶ United States Department of State, Bureau of Oceans and International Environmental and Scientific Affairs. 2014. Final Supplemental Environmental Impact Statement for the Keystone XL Project: Executive Summary. <http://keystonepipeline-xl.state.gov/documents/organization/221135.pdf>.

access to health insurance.²⁷ People without access to health care may not have the resources to seek medical care should a spill occur or should exposure to pollutants occur. *Consideration could be given to the use of culturally appropriate language and engagement strategies in addition to strategies above to reduce pollution risk. Enbridge could consider adopting principles cited in EPA’s “Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples”, which includes the above recommendations as well as considerations of the often confidential and sensitive nature of tribal resources, an opportunity for open dialogue, relationship building and fair treatment and respect for the Native American culture.*²⁸

²⁷ Minnesota Department of Health. 2014. 2013 Minnesota Health Access Survey. <http://www.health.state.mn.us/divs/hpsc/hep/publications/coverage/healthinscovmnhas2013primary.pdf>.

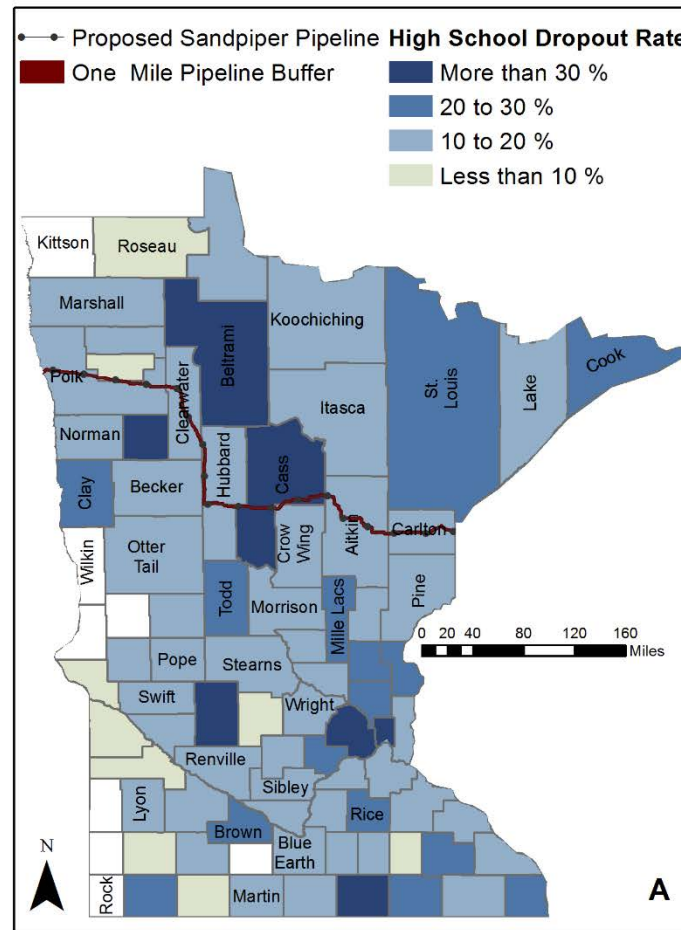
²⁸ U.S. EPA. 2014. EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples. <http://www3.epa.gov/environmentaljustice/resources/policy/indigenous/ej-indigenous-policy.pdf>.

Map 11A shows high school dropout rates in Minnesota in 2012. Three of the top six counties – Beltrami, Mahnomen and Cass – are located near the proposed pipeline route. They had dropout rates of 44, 38.5 and 37 percent, respectively. The statewide average dropout rate in Minnesota was 18 percent.

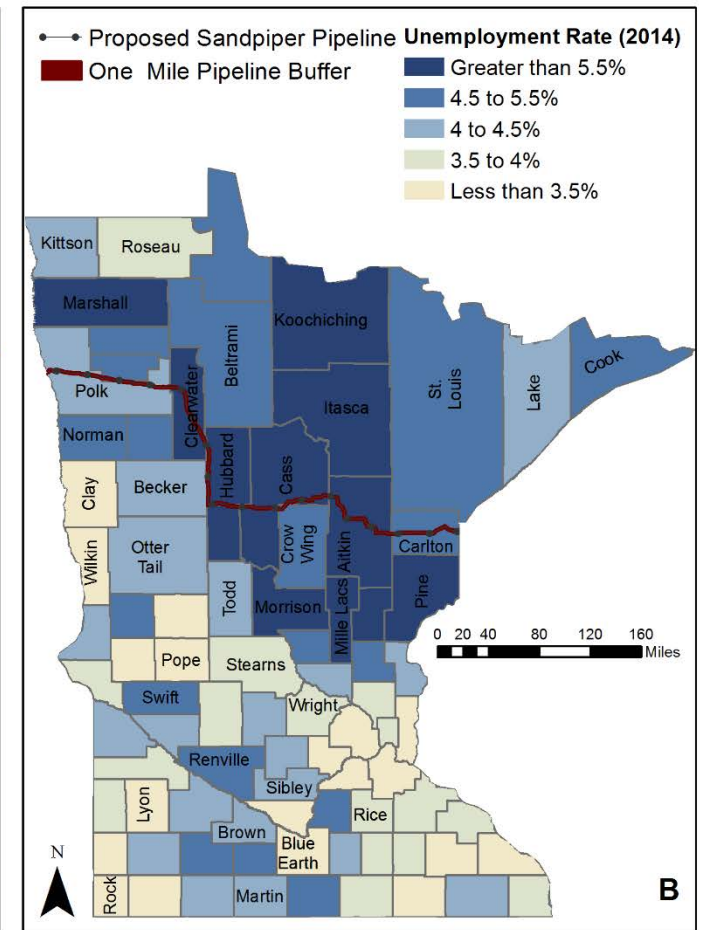
Map 11B shows unemployment rates in Minnesota in 2014. The statewide average was 4.1 percent. The average for counties located along the proposed pipeline route was 5.8 percent. High unemployment rates can add to financial and emotional stress and can contribute to poor health, including heart issues and reduced lifespan.²⁹

Consideration could be given to whether the proposed pipeline route further burdens communities that are dealing with higher than average dropout rates and unemployment.

Map 11. A) High School Dropout Rates, B) Unemployment Rates



Data Sources: High school dropout rates, available at <http://www.countyhealthrankings.org>. Data date: 2012.

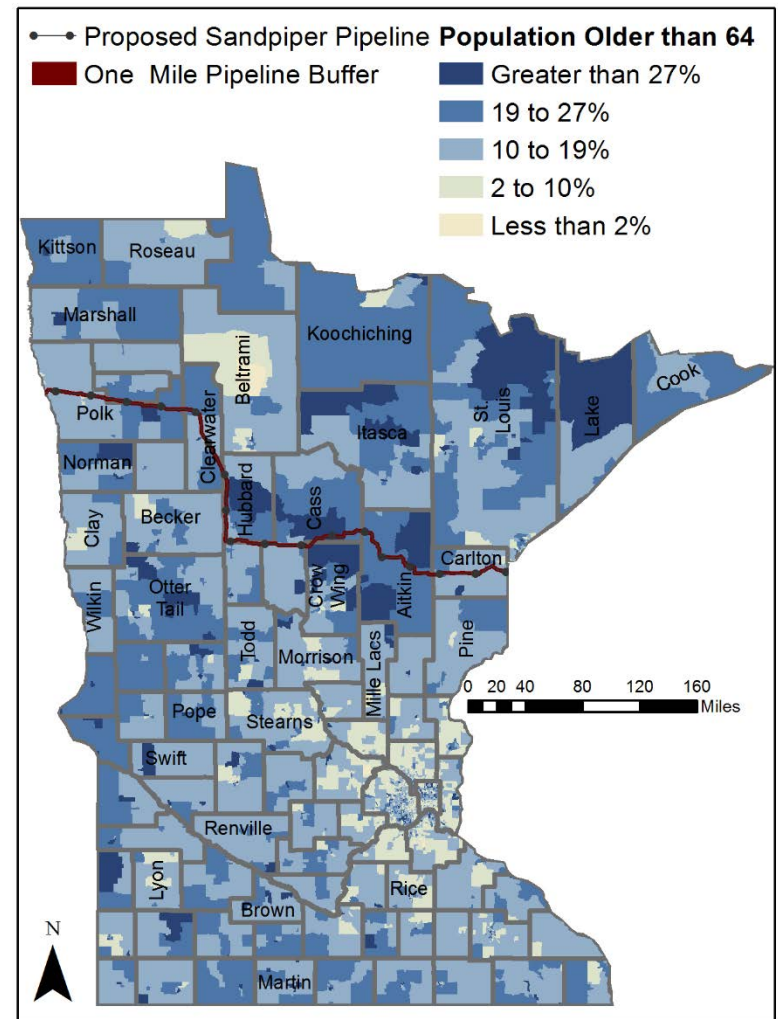


Unemployment rate includes anyone over 16 looking for a job for more than four weeks, available at http://goto.arcgisonline.com/maps/Demographics/USA_Unemployment_Rate. Data date: 2012.

²⁹ N. Dragano, B. Hoffmann, A. Stang, S. Moebus, P. Verde, S. Weyers, *et al.* 2009. Subclinical Coronary Atherosclerosis and Neighborhood Deprivation in an Urban Region. *European Journal of Epidemiology*. 24(1):25-35.

Map 12 shows the population of Minnesota age 65 or older in 2012. In the United States, 13.5 percent of the population is age 65 or older. In Minnesota, 14 percent of the population is age 65 or older. In counties along the proposed pipeline route, 19 percent of the population is age 65 or older. In Minnesota, people over the age of 64 live mostly in the northern part of the state. People over the age of 65 may be more sensitive to pollutants. For example, arsenic accumulates in cardiovascular tissue and can trigger inflammation of the arteries, increasing the risk of atherosclerosis and vascular disease.³⁰ *Considerations could be given to taking measures to protect sensitive populations and to exploring additional methods for communicating with this group, such as door-to-door visits.*

Map 12. Population over the Age of 64.



People over the age of 64 by census block, available at <http://www2.epa.gov/eiscreen>. Data date: 2011.

³⁰ T. Adler. 2003. Aging Research: The Future Face of Environmental Health. Environmental Health Perspectives. Pp. 111-14.

SUMMARY OF POTENTIAL COMMUNITY VULNERABILITIES

This GIS assessment of the proposed Sandpiper pipeline route in Minnesota provides initial insights into potential community vulnerabilities. There are two phases of potential risk – the pipeline construction phase and the pipeline operation and maintenance phase. Risks to resources could occur during the pipeline construction phase and the pipeline operation and maintenance phase. Pipeline construction risks could include habitat fragmentation, sediment input to lakes and rivers, compaction of soil, and disturbance to activities in or adjacent to the pipeline path and staging area. Operation and maintenance risks could include pipeline spills, which is why the buffer area was added. In addition, social vulnerabilities in the region may limit the ability of communities to interpret complex technical information and participate effectively in the decision-making process.

Based on this analysis, potential community vulnerabilities from the proposed pipeline include:

- *Wild Rice Lakes:* The proposed pipeline route crosses through 6 of the 10 highest-producing counties for wild rice in the state. The pipeline buffer would pass through 20 wild rice lakes encompassing 3,136 acres of water.
- *Hunting Areas:* The proposed pipeline route cuts through the second and fourth most productive regions for wild turkey hunting. A designated state hunter walking trail – White Elk Trail – would be cut across by the proposed pipeline route and the Salo Marsh Trail is at the edge of the pipeline buffer. The buffer would go alongside Upper Rice Lake, a lake important for waterfowl habitat.
- *Sites of Specific Tribal Interest:* The proposed pipeline route would bisect 180 sites of specific tribal interest as identified by Honor the Earth. The rich tribal history of Minnesota and the extent of the sites along the entire pipeline suggest a comprehensive review by the affected tribal governments would be beneficial.
- *Ecosystems/Species:* The proposed pipeline could potentially fragment 11 trout streams, 8 biodiversity sites ranked “high” or “outstanding,” and 11 biologically significant lakes ranked “high” or “outstanding.”
- *Groundwater and Drinking Water:* Groundwater is the primary source of drinking water for people in Minnesota. Its availability is limited. The proposed pipeline could threaten several aquifers along its route, particularly in Hubbard, Wadena and Cass counties, where sand-plain aquifers produce large amounts of water but are easily contaminated. Drinking water supply areas in Wrenshall, Park Rapids and Carlton may be at risk for contamination during construction or from spills. Finally, 10 impaired rivers, including the headwaters of the Mississippi River, could be at risk from additional pollution from the proposed pipeline.

- *Socioeconomic Indicators:* The proposed pipeline appears to disproportionately affect disadvantaged communities. The proposed pipeline would run between the largest tribal reservations in Minnesota and through treaty lands. Beltrami, Mahnomen and Cass counties have high school dropout rates double the state average and are located near the proposed pipeline route. Unemployment rates in counties along the proposed pipeline in 2014 were 5.8 percent compared to the statewide average of 4.1 percent. In Minnesota, people over the age of 64 live mostly in the northern part of the state, 19 percent of the population in counties along the proposed pipeline compared with a statewide average of 14 percent.

To: Pipeline.Comments@state.mn.us

Date: May 25, 2016

Subject: Pipeline Scoping

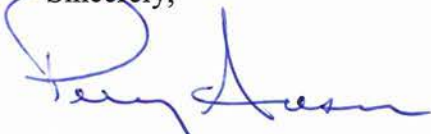
On behalf of the Minnesota AgriGrowth Council (AgriGrowth), I am writing in support of the Sandpiper and Line 3 Replacement projects, both of which are vital to the state of Minnesota. As an organization that represents a broad cross-section of Minnesota's agriculture and food sector, energy infrastructure and energy security are important to our members. The development of both of these projects would lead to continued job creation, safer distribution of petroleum products, and a boost for Minnesota's local economy.

AgriGrowth and its members understand firsthand how much these projects would benefit our state and the industries within it. Approval of these pipelines would help move more oil by pipeline, freeing up rail capacity for other products important to Minnesota agriculture and trade. AgriGrowth is also concerned that Minnesota's regulatory system does not become a deterrent to job creation. These types of delays foster concerns within Minnesota's business community (including agriculture) that Minnesota's regulatory permitting processes have become overly burdensome and confusing to project proposers.

For now, I ask that the PUC adhere to the 280-day time limit to prepare the EIS to keep the project schedule on track. The scope of the EIS should serve both the public and private purpose of the two projects. It should not be overly broad, nor should it be so narrow as to be inadequate. This important balance must be met in this process.

Thank you for your continued work for our state and for your dedication in moving these projects forward.

Sincerely,



Perry Aasness
Executive Director
Minnesota AgriGrowth Council
400 Robert Street North
Suite 1520
St. Paul, MN 55101

Please provide your contact information. This information and your comments will be publicly available.

Name: MARY ACKERMAN Phone: 218 675 6729
Street Address: 4561 Alder Ln NW
City: Hickensock State: MN ZIP: 56452
Email: ackermanmac@gmail.com

My comments pertain to:

- ☐ Sandpiper Pipeline Project
☐ Line 3 Replacement Project
☒ Both Projects

- ① We must have ~~the~~ credentialed & experienced experts supervising an EIS.
- ② This will be an energy corridor if both are approved in the proposed route. The EIS MUST assess cumulative effects of the route on water & land.
- ③ Tribes must be involved in all parts of the process.
- ④ Meetings for public comment & information MUST be open, held in several sites in the geographic areas affected — not the Cities — at convenient times for workers & students.

Mary Ackerman
4561 Alder Ln NW
Hackensack, MN 56452

Page 1 of 2

PPL- 13-473 AND CN – 13-474
PPL -15-137 AND CN-14-916

PIPELINE COMMENTS FOR SANDPIPER & LINE 3

Some comments were made at the Hearing in Park Rapids on May 3, 2016

May 10, 2016

I am a private citizen and resident of Cass County. I am also one of the Founders of the Northern Water Alliance of MN and can speak for our membership on the Scoping of the EIS. First, let me say that I am not against pipelines per se. I drove here. I enjoy way too many products produced with petroleum. I am, however, totally against the route Enbridge is proposing for Sandpiper and now a NEW Line 3. **The two lines create a NEW Energy Corridor across very sensitive lands and water.**

Earlier in one of the Sandpiper Information Sessions in Pine River I asked an Enbridge fellow what his ideal route for a pipeline would be. His answer was: As straight as possible, on flat land, soil conditions as impermeable as possible --- clay or other hard soil, and near other corridors where anomalies might be taken care of quickly and efficiently. **This sounds nothing like the proposed Energy Corridor. An EIS should make a comparison of the 'ideal' routing and the proposed route.**

Early in the Sandpiper process the both the MPCA and DNR proposed two alternate routes that I believe should be part of the EIS scoping if we are to believe they might actually be considered. Those two routes posed far fewer environmental problems but would be environmentally challenging as well.

Spills – We know spills are part of any pipeline. They are not “anomalies”. A complete EIS will include a modeling analysis for any river crossing, lake crossing, wetland crossing or stream crossing. These are tricky analyses because of the dynamics of water.

Involvement of the Army Corps of Engineers and USGS would make sure this EIS is thorough. A complete EIS would bring in their expertise. I don't believe there has been an analysis yet that distinguishes between road ditches and wild rice wetlands.

Ground Water – The USGS has done a 30 year history of the Straight River Aquifer. This information must be a part of any EIS.

Northern MN has 3 of the 4 major water drainage systems in all of North America... Going to the Gulf, Hudson Bay and the Atlantic. **A complete EIS will make sure the modeling for a**

Mary Ackerman
4561 Alder Ln NW
Hackensack, MN 56452

Page 2 of 2

PPL- 13-473 AND CN - 13-474 PIPELINE COMMENTS FOR SANDPIPER & LINE 3

PPL -15-137 AND CN-14-916

Some comments were made at the Hearing in Park Rapids on May 3,2011

spill takes into account the drainage of our waters and the potential ground water impact for Twin City drinking water and across state lines.

Surface Water – In this context I ask that the economic impact of potential spills be a part of the EIS. Minnesota's tourism industry is largely built upon our reputation for abundant and clean lakes. There are currently **261,000 jobs** in our tourism industry, and this industry brings in **\$13 BILLION in sales revenue annually.** *Clean water is not optional.*

Wild Rice – MN in the largest producer of wild rice ... in the world. This is an annual grass only distantly related to the cultivated wild rice you see in some grocery stores. Once wetland and rice lakes are contaminated the rice cannot come back. **A thorough EIS will include the experts on this important grain from the agricultural view.**

Cultural aspects of wild rice cannot be ignored. It is a sacred food for Native Americans. **A full EIS will consider the cultural aspects of any disturbances to our wild rice.**

Tribal -- It is imperative that the cultural impact and historical impact of such routes be included in such a survey. There are considerable archeological and geological artifacts in this area. Consideration must be made to **include the Native American Treaty Issues of 1855 and 1837. Federal Agency involvement should be a priority.** Tribal Governments' on-going input and involvement, not to mention their expertise, is imperative in this EIS.

Decommissioning – A thorough EIS will include the abandonment of Line 3 and the impact it will have. The option of removal must be on the table and not at public expense.

Legacy – The Dept of Commerce and the state of Mn have a lot at stake. This NEW Energy Corridor will pump considerably more oil than the Keystone XL. We need a quality EIS using expertise the caliber of Battelle that did the EIS for the Keystone. **Expertise should not be chosen or influenced by the Enbridge Corporation whose route is at stake.**

I said this was a legacy issue.... This will be the first thorough EIS on a new route for MN. It will become the bar for the next ones. Let's be sure the bar is high enough to be proud of. ***This is Minnesota. We can do it right so other states can replicate a comprehensive EIS process.*** If not, there are not only reputations at stake, but drinking water. That's a LEGACY.

MEMBERSHIP

MN Petroleum Marketers
Association

Minnesota Farm Bureau

Minnesota Power

Minnesota Chamber of
Commerce

Minnesota Agrigrowth
Council

Enbridge Energy

Minnesota Retailers
Association

United Association
representing pipefitters,
welders, plumbers and
service technicians

Minnesota Petroleum
Council (API)

Marathon Ashland
Petroleum

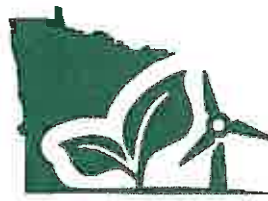
MN Service Station and
Convenience Store
Association

Midwest Food Processors
Association

United Piping, Inc.

Avery Pipeline Services
Inc.

Lake Superior Consulting



MINNESOTA
AG ENERGY ALLIANCE

Statement by the Minnesota Ag-Energy Alliance

On the Minnesota Public Utilities Commission's

Scoping Meetings for the Sandpiper and Line 3 Replacement Projects

The Minnesota Ag-Energy Alliance is pleased that the scoping process for the Sandpiper and Line 3 Replacement projects is moving forward. A fair and final evaluation of these two projects has been delayed for far too long. Sandpiper and Line 3 will ensure the safe delivery of abundant, dependable energy that is vital to heating Minnesotans' homes, fueling cars and airplanes, and generating electricity for residential and industrial use. Together, they will create 3,000 construction jobs, while providing a \$2.3 billion boost to Minnesota's economy. In addition, they will generate \$25 million annually in Minnesota property taxes after Sandpiper's first year of operations. It is critical that we keep these two vitally important infrastructure projects moving forward.

From: [Sally Allen](#)
To: [*COMM Pipeline Comments](#)
Subject: Comments on 05/09/16 Meeting
Date: Tuesday, May 10, 2016 1:36:46 PM

Hello,

The speakers stating the facts impressed me the most. There is a need for transparency, the last speaker before the break said it best.

Some of the speakers talk as if this type of work should go on forever. It is time to change our way of thinking and work on clean energy solutions.


We shouldn't be sending oil through pipelines that will rupture or leak over American Indian land and water.

After court decisions in 2010, there are large amounts of money being spent to deny climate change and change legislation, this is evil and dangerous.

More clean energy jobs will be available, people working in the oil and gas energy sector can get training and adapt.

Change is good, embrace it, we all need to work towards a clean energy future.

Sincerely Sally Allen

Sally Allen Recoveries Specialist | Recovery Operations |  Target | 3701 Wayzata Boulevard, MS 3C-I | Minneapolis, MN 55416 | 612-696-1269 (ph.) | 612-307-7807 (fax) | Sally.Allen@target.com

Sandpiper Pipeline PPL-13-473 CN-13-474
Line 3 Replacement Project PPL-15-137 CN-14-916

Jamie MacAlister DOC

Testimony Park Rapids MN

This is the first pipeline EIS that has been mandated by the State of aaaaaaaaamn. State law requires the RGU to use “all practicable means and measures, including financial and technical assistance” to protect Mn’s environment. Mn State 1160 states...”Where there is potential for significant environmental effects from any governmental action, the action shall be proceeded by a detailed EIS.”

That brings us to the present. We have a Canadian company determined to transport Bakken and tar sands oil in the Sandpiper and Line 3 from Clearbrook to Superior Wisconsin.

There is a difference between private purpose and public purpose. That needs clarification within the proposed EIS. Profit is not the same as “public good”. Eminent Domain is not only for pipelines and corporations because it is good for them economically, it is also for public good....not defined as profit. Eminent Domain must serve a public purpose, clearly separate from the purpose of the applicants project, Their private purpose is not the public purpose. The shortest route, economically more feasible for them, consequently dismissing other alternative routes, is the applicants private purpose.

On p.6 of DSDD Sandpiper Criteria for Evaluating Alternative.(Mn. Rule 4410.2300) Alternatives could be eliminated based on information developed through the EIS process.

1. Alternatives must meet the need of the project. Enbridge states oil must go from the Bakken to Superior and connect to Midwest refineries and beyond. That is private purpose. Citizens have researched and offered alternative routes that would meet the public purpose and get the oil to Illinois.
2. Alternate routes would have environmental benefits compared to proposed routes. Clearest lakes in the state based on U. of Mn. Resource Center Study of Water Clarity, tribal lands, traditional culture, prime wild rice lakes. DNR states Mn. Supplies 50% of the worlds handpicked wild rice annually. Critical wetlands, state, forests, North Country Trail, 13 trout streams, including the Straight River, a nationally known brown trout fishery, and Itasca State Park, Mississippi River and it’s Headwaters, from which flows 4.8 million gallons of water every day. The proposed routes are a disaster waiting to happen. SA 04-05 must be considered.

Question: How will MEPA Law, protecting MN. Environment, be guaranteed in the EIS regarding the applicants proposal?

1. (4.3 Data and Analysis p15) No field-level collection will be performed for any of the route alternatives if difficult and deemed unnecessary. Field data for the applicants preferred route has been completed by the applicant. Has that data been scientifically verified by reputable outside groups or individuals? At what point does one choose not to gather data on proposed alternate routes? Surely, if the will to gather data is evident, it can be done and ought to be done by experts in their field.
2. (3.5 p.12) Modified design and layouts. DNPC is requesting a 750 foot swath in order to install the lines. That is greater than the length of two football professional fields! Wetlands, forests wildlife areas can be impacted by these pipelines. This certainly affects property values and aesthetics, not in a positive sense.
3. According to the EQB document, the potential to impact minority and low-income population needs to be assessed and described in the EIS. How will that be done? Projects that impact tribal lands and communities should also specifically engage tribal communities in comprehensive consultation. What evidence will assure that this has been done?

Dilbit Study. A thorough, lengthy, document researched by the National Academy of Science. "Dilbit—diluted Bitumen or Tar Sands oil.

1. "A spill of diluted bitumen into a body of water initially floats and spreads, while evaporation of volatile compounds may present health and explosion hazards, as occurs with nearly all crude oils. Tar Sands oil is different. It is high density, viscosity of peanut butter, and sinks to the bottom."
2. "Spill recovery is highly problematic because there are few effective techniques for recovery of submerged oils."
3. Line 3 will transport 760,000 barrels of Tar Sands oil per day. The Sandpiper...375,000 barrels...totaling almost 48,000,000 gallons per day flowing through Headwaters country. That is more than the Keystone XL!!!!

The EIS

Don't just do it...but do it right. 1) Hire experts who are experienced, non-biased and thorough. 2) Be transparent 3) Take the time to do it correctly, forget the rush. Or it will come back to haunt you. 4) The trust factor with the public is low, very low, at present. This is a challenge, but also an opportunity. Set a high bar for us and future generations.

Mary Adams May 23, 2016
218-652-3519

Nevis Mn 56467

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From: cheryl.adams@upm.com
To: [*COMM Pipeline Comments](#)
Subject: Opposition Comment on Sandpiper Pipeline Location May 24 2016
Date: Tuesday, May 24, 2016 12:06:23 PM
Attachments: [80 Acre Location 50 26 5Map.pdf](#)

After reviewing the Sandpiper Pipeline Project, Blandin Paper Company is against the pipeline going through one lone Blandin 80 acre parcel (T50N, R26W, Sec. 5) in Aitkin County when the parcel is surrounded by public lands on three sides (see attachment).

Blandin's conservation easement is a legally binding contract between the State of Minnesota and Blandin Paper Company. It is an encumbrance on the deed of every forest land parcel that Blandin owns. As stated in the easement Section 2.2.1: "[The purpose is] to continue management of the Protected Property [Blandin forest land] as a sustainable working forest in a manner that will protect in perpetuity the Conservation Values and to prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values including conversion of the Protected Property to non-forest uses".

The easement is to prevent fragmentation and provide economic value to the region through the use of forest management to maintain and improve the timber resource for multiple markets and provide wildlife habitat for the public's enjoyment. Non-forested uses, such as this pipeline, do not meet the requirements of the easement or the economic needs of the Paper Company. The pipeline route will significantly affect Blandin's ability to manage the forest resource and, therefore, Blandin is not in favor of the proposed route location.

Cheryl J. Adams

Cheryl J Adams | Forest Resources Manager, Forestry

UPM Blandin Paper Company; 115 SW 1st St; Grand Rapids, MN 55744 Visit www.upm.com/na

Follow us: [UPM ViewPoint](#) | [Twitter](#) | [YouTube](#) | [Facebook](#) (UPM Blandin Forestry)

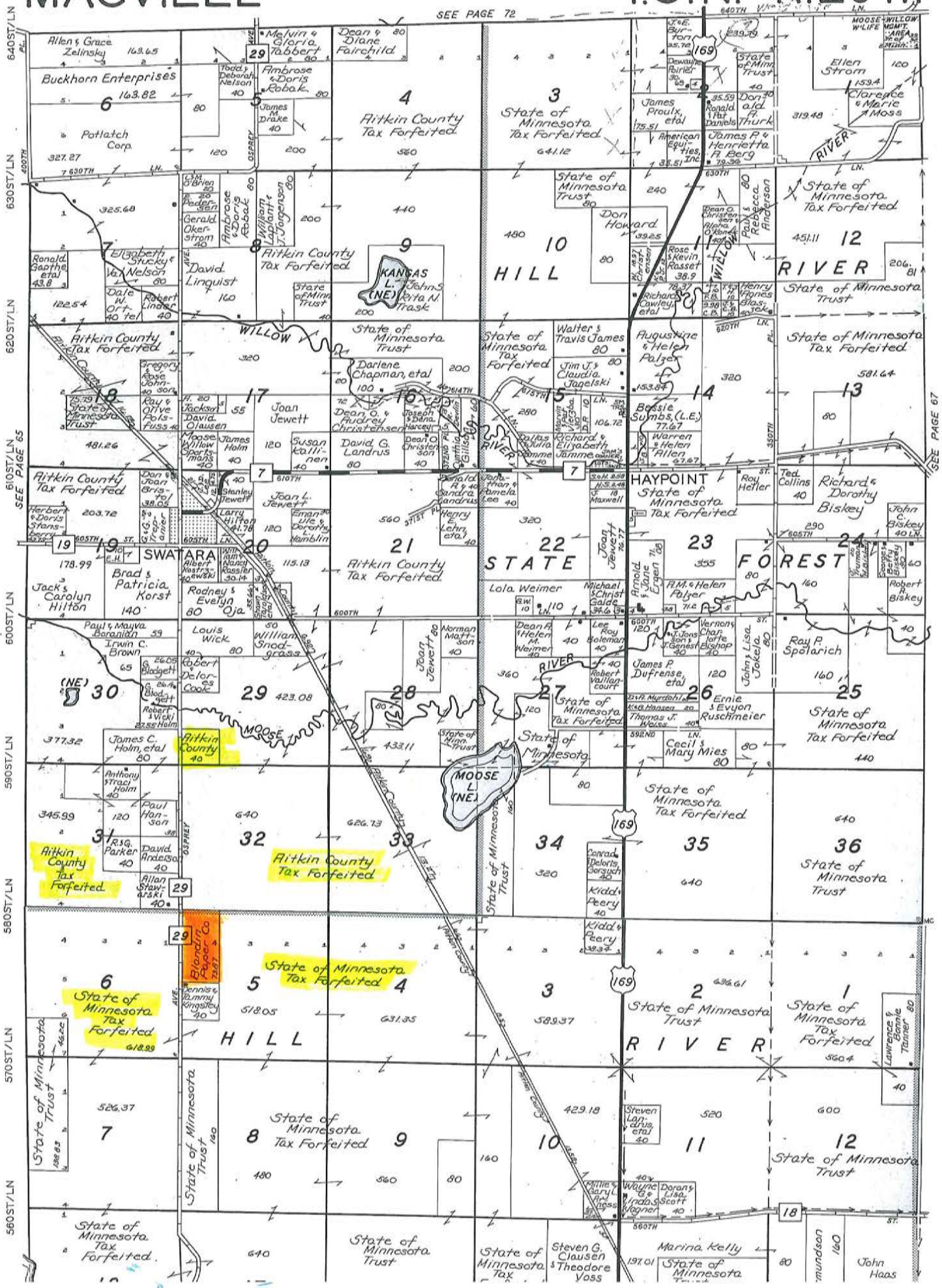
UPM – The Biofore Company

UPM leads the integration of bio and forest industries into a new, sustainable and innovation-driven future.

Give paper a new life. Be Biofore. Recycle.

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SEE PAGE 72



From: [Amanda MacDonald](#)
To: [*COMM Pipeline Comments](#)
Subject: Scoping EIS comment for Sandpiper (13-473 & 13-474) and Line 3 Replacement (14-916 & 15-137)
Date: Friday, May 20, 2016 2:20:05 PM

Dear Ms. MacAlister,

On behalf of the Aitkin Area Chamber of Commerce I am writing to ask that the DOC adhere to the 280-day time limit to prepare an EIS in order to keep the Sandpiper project on track.

The economic impact this project has on our state and our community is vital. Further delays cause a loss of revenue for our businesses and communities. This project would stimulate our local economy.

Together, they will create more than 3,000 construction jobs, while providing a \$5 billion boost to region's economy directly, with even more economic activity associated with the "spin off" economics of the projects primarily in the hospitality and retail industries, among others.

In addition, Sandpiper alone will generate \$25 million annually in property taxes that will benefit local communities throughout our state.

I urge you to once again adhere to the 280 day limit in order to keep this project moving forward.

Kind Regards,

Amanda MacDonald
Executive Director
Aitkin Area Chamber of Commerce

Sincerely,

Amanda MacDonald
301 Minnesota Ave N
Aitkin, MN 56431
upnorth@aitkin.com

From: [Kirsten](#)
To: [*COMM Pipeline Comments](#)
Subject: EIS for Oil Pipeline in Minnesota
Date: Wednesday, May 25, 2016 8:14:27 AM

Hello,

I grew up in Minnesota and my family still lives in Maple Plain. I ask that Minnesota provide an Environmental Impact Statement concerning the proposed Enbridge pipeline that is honest, independent, and competent. Minnesota's rivers and lakes are far too valuable a resource to allow them to be endangered by an oil pipeline, especially one that is built and operated by a company that has such a poor record for safe management.

Kind regards,

Kirsten Anderson
778-987-5268

Sent from my iPad

To: Minnesota Department of Commerce
Date: May 11, 2016

From: Vicki Andrews
31135 Sunny Beach Road
Grand Rapids MN 55744
218-259-4254

I am a retired social worker who worked primarily in child protection and I know what children and families need to survive. I know that they need clean air to breathe and clean water to drink and healthy food to eat. Parents need jobs that pay them enough to buy the necessities of life for their families as well as good education and health care. I also know that they don't need us to destroy the air, the water and their hopes for a healthy future.

I don't have a scientific background and I don't have a good grasp of all the technical information on why some pipeline routes are better than others. I do know that the proposed pipelines will probably be carrying oil extracted from the Bakken oil shale formation in North Dakota, which wastes 5 barrels of water for every barrel of oil produced and produces up to 50% more greenhouse gases than conventional oil because of the intense heating that is needed before it can be extracted. It also contains high levels of corrosive hydrogen sulfide and is extracted from the earth through hydraulic fracking, which is very problematic. I know that these pipelines may also be carrying tar sands oil, which in many ways may be even more hazardous. And I know that it is never a question of whether pipelines will leak, but rather when. By building new pipeline routes, we are putting more Minnesota land and waterways at risk. It just doesn't make sense to me.

I also want to speak briefly on the pipeline abandonment issue as I live in Grand Rapids, home of the soon to be abandoned pipeline #3. It is old and probably in need of replacing or removing, but to abandon it can lead to many unpleasant consequences. If Enbridge is not required to remove the pipeline and restore the damaged ecosystems, there may never be a full accounting of the on-going and future contamination surrounding the area. As the pipeline is old and has had many structural anomalies, there has likely been oil leaked into the area that we are not aware of. There can also be problems from treatment chemicals in the pipeline, pipeline coatings and their degradation, possible PCB contaminations from lubricants. Over time there can be shifting of the abandoned pipeline into unplanned water conduits

which can cause unnatural drainage of water deep underground, which can then cause soil and water contamination. There are simply too many potential dire consequences to proceed with abandonment without much further study and improved legislation to protect the earth and the landowners.

I also know enough to know that we are destroying the earth and even the future of humanity by our insane addiction to fossil fuel and our refusal to really look at what is happening to our planet. I know enough to know that the pipelines you are considering adding to northern Minnesota will do nothing to improve life in the long run, only provide some temporary jobs to people now and some permanent jobs to some when they're completed. They will also put billions and billions of dollars into the hands of the wealthy owners, stockholders and CEO's of Enbridge, BP, and other companies making their fortunes from fossil fuels.

I also know enough to know that building new ^{pipelines} routes through Minnesota is only going to destroy more forests, endanger more wetlands, rivers and lakes. And I know enough to know that the end result of more pipelines is more processing and burning of oil, which is what is ultimately destroying our planet. The sad thing is that I believe that everyone in this room knows this also.

I hope that everyone here has given some thought to the future we are handing down to our children and grandchildren. If we continue on our present path in the very near future, whether it will be twenty years in the future, or twenty five or thirty – our children and grandchildren are going to be suffering tremendously from the havoc of climate change. And they will know that we – at this time in history – could have done something to turn things around and we – for whatever reasons - chose not to.

We are a very intelligent and creative people and we are capable of turning this entire situation around. If we learn to conserve what we have, to build smaller homes, use energy efficient appliances, vehicles.... If we put the money, the jobs, and the technology into turning from a country dependent on oil, gas and coal to a country run on renewable energy, such as solar and wind, our children could inherit a world that they could survive and thrive in. And then they will know that we did choose to do something to secure their future.

Please provide your contact information. This information and your comments will be publicly available.

Name: Dyann Andybur Phone: 218-341-1304

Street Address: 4119 McEnloch St

City: Duluth State: MN ZIP: 55804

Email: dyann_andybur@yahoo.com

My comments pertain to:

- ☐ Sandpiper Pipeline Project
☐ Line 3 Replacement Project
☒ Both Projects

Northern Minnesota is home to sensitive wetlands, headwaters and drinking water sources, in addition to wildlife habitat and wild rice producing lakes that indigenous people harvest.

Enbridge's history of transporting tar sands in similar sensitive areas is a matter of record. Enbridge was responsible for the worst onshore spill in U.S. history - the 2010 Kalamazoo River disaster - which poured almost a million gallons of tar sands into Talmadge Creek and the Kalamazoo River.

The National Academies of Sciences recently released a study that underlines the inherent danger surrounding the transportation of crude oil and that transporting it by any means is unacceptable and a disaster waiting to happen.

I understand that the Dept. of Commerce plans to examine seven possible oil spill scenarios for Line 3 and Sandpiper.

I ask that you take the perspective that the pipelines will leak.

Include multiple Oil Spill Scenarios in the EIS. To include moderate and severe spills for each type of commodity - Crude Oil, Tar Sands Oil with multiple (multiples of seven) scenarios in wetlands, drainage ditches and rivers, and for each scenario, identify and quantify the impact on wetlands, fisheries, nearby bodies of water.

Also, the impacts on cultural resources, local landowners, local communities & terrestrial species.



Comment Form: Scoping Energy Environmental Review and Analysis

Please provide your contact information. This information and your comments will be publicly available.

Name: Dylan Andrybur Phone: _____
Street Address: 4119 McCulloch St
City: Duuth State: MN ZIP: 55804
Email: dylan.andrybur@duuth.com

My comments pertain to:

- ☐ Sandpiper Pipeline Project
- ☐ Line 3 Replacement Project
- ☒ Both Projects

Also, identify who will respond, what remedies will be done, what the cost to taxpayers would be and what damage is long-term, unresolvable, because there will be damages that cannot be resolved.

Please provide your contact information. This information and your comments will be publicly available.

Name: Don Arnosti Phone: 612-718-3626

Street Address: 1722 Poincetta Ave

City: St. Paul State: MN ZIP: 55105

Email: donarnosti@gmail.com

My comments pertain to:

- ☐ Sandpiper Pipeline Project
- ☐ Line 3 Replacement Project
- ☒ Both Projects

The "underlying purpose" of the project is clearly scoped too narrowly. Superior is a way station, not a destination. The key is "connect to various pipelines, expanding access to Refinery markets in the US Midwest & beyond."

→ The EIS should examine the effects of shipping the oil beyond Superior - on the ancient pipeline under the straits of Mackinac that if it ruptured would pollute the Great Lakes.

→ The EIS should examine the effects of shipping oil ^{beyond Superior} via tankers on the Great Lakes. This is a real possibility with oil arriving in a port, now that Congress is allowing export of US crude oil.

→ The EIS should examine route (SA-05) which crosses fences, rivers & wetlands, (SA-04) and uses existing corridors. This route allows "expanding access in the US Midwest and beyond" - as stated in the underlying purpose.